

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

C. Rev. No.06/2014 & CMA No.08/2014

Date of order: 09.02.2015

Daljit Singh

Vs.

Madan Lal & ors.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat, Judge.

Appearing counsel:

For Appellant(s) : Mr. B. S. Manhas, Advocate.
For Respondent(s): Mr. B. S. Salathia, Sr. Advocate with
Ms. Meenakshi Salathia, Adv.
Mr. B. L. Kalgotra, Adv.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal	:	Yes/No

1. This revision is directed against the order dated 18.02.2014 passed by learned Sub-Judge, Samba, by virtue whereof, the Trial Court dismissed the application filed by the petitioner and proforma respondent Nos.4 & 5 under Order 7 Rule 11 read with Section 151 CPC. The impugned order passed in Civil Suit titled *Madan Lal and ors. vs. Jeet Kour & ors.* is assailed on the ground that respondent Nos.1 & 2 (plaintiffs) while leading evidence filed a report of concerned Patwari regarding the share of Late Chet Singh (father of Jeet Kour-respondent No.3) out of Khasra No.39 of Village Sunjwan, Tehsil Samba and the said report reflected that Chet Singh had sold his entire share during his lifetime and there was no land available for his successor-Jeet

Kour to transfer in favour of respondent Nos.1 & 2 out of the said Khasra number.

2. The case of the petitioner is that he filed an application under Order 7 Rule 11 read with Section 151 CPC for dismissal of the suit in the light of the aforesaid report of Patwari but the Trial Court dismissed the application. The impugned order is assailed as being perverse, illegal and unsustainable in law. The petitioner claims that in earlier round of litigation, it has been held that respondent Nos.1 & 2 were out of the possession of the suit land and no injunction could be granted in their favour. Thus, the impugned order is sought to be quashed.
3. Heard learned counsel for the parties and perused the record.
4. It appears that during the course of trial of the suit, respondent Nos.1 and 2 filed a report from the revenue agency dated 05.04.2011 which reflected that Chet Singh-father of respondent No.3 (Jeet Kour) had transferred his entire share out of Khasra No.39 measuring 8 Kanals 3 Marlas situated at Sunjwan, Tehsil Samba. However, respondent Nos.1 & 2 while adducing evidence as plaintiffs in the suit,

did not examine the Patwari to prove the aforesaid report. This prompted the petitioner and proforma respondent Nos.4 & 5 to file an application under Order 7 Rule 11 read with Section 151 CPC for dismissal of the suit. Learned Trial Court held that the application did not fall in any of the clauses of Order 7 Rule 11 CPC and the same came to be dismissed.

5. The case of the petitioner and proforma respondent before the learned Trial Court was that respondent No.3-Jeet Kour had agreed to sell 3 Kanals of land out of Khasra No.39 situated at Sunjwan, Tehsil Samba to respondent Nos.1 & 2 vide Agreement to Sell dated 11.07.2001. However, respondent No.3 did not keep her commitment and respondent Nos.1 & 2 filed a civil suit before learned Sub-Judge, Samba, seeking a decree of Specific Performance against her besides seeking relief of injunction against the petitioner and proforma respondent Nos.4 & 5. It is not disputed that no time frame was fixed for performance of contract. Respondent Nos.1 & 2 specifically averred in the plaint that it was on 10.07.2005 that respondent No.3 refused to perform the contract leaving no option for respondent Nos.1

& 2 but to approach the Civil Court with suit for specific performance of contract. With the specific averments in regard to cause of action for filing of the suit, rejection of plaint could not be warranted.

6. Parties have joined the issues and respondent Nos.1 & 2 figuring as plaintiffs in suit are adducing evidence at the trial. As many as, 10 issues have been framed in the suit but none of them relates to determination of question relating to rejection of plaint. It is well settled that the Civil Court has to return findings on issues framed in the suit and such issues must reflect the controversy involved in *lis* which requires adjudication. It is equally well settled that no material other than the pleadings of the parties besides documents relied upon by them giving rise to the issues on point of variance between the parties can be looked into or made basis of enquiry when the suit is being tried. In other words, it can be said that the Court has to limit the issues to the pleadings of the parties and documents relied upon and return findings on such issues in the light of the evidence adduced at the trial. It is impermissible to file applications raising grounds on which the plaintiff relies in support of his claim or

raising the plea in the nature of defence when the suit is being tried on merit. The Civil Court would not be acting within its jurisdiction if it proceeds to consider applications other than the pleadings of the parties raising or defending the issues. Such course is prohibited by law. The findings have to be recorded on issues framed in the suit and if it is brought to the notice of the Court that an important issue has been left out or an additional issue is required to be raised in the light of the additional pleadings of the parties, the Civil Court would be under an obligation to raise issue in this regard if filing of subsequent pleadings like rejoinder or replica has been allowed.

7. The power under Order 7 Rule 11 CPC can be exercised at any stage of the suit before the conclusion of trial and for exercising such powers, the Trial Court has to look into the averments of the plaint. This position of law is well settled and stands reiterated in '***The Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust***' reported in '***AIR 2012 SC 3912***'. However, in the instant case, the petitioner relies on the report of Patwari produced

by respondent Nos.1 & 2 while their evidence was being recorded. Such report, admittedly does not form part of the pleadings and same cannot be looked into at this stage to return findings with regard to a case being made out for rejection of plaint. Averments in the application filed for rejection of plaint are immaterial as the Court is duty bound only to scrutinize the pleadings and averments in the plaint. Whether there is material to sue i.e., whether the allegations in the plaint disclosed the facts constituting cause of action is to be ascertained from the plaint and not from any application filed in the course of trial which does not form part of the pleadings.

8. There being no merit in the instant revision petition and the impugned order not being shown to suffer from any legal infirmity, the instant revision petition is **dismissed** alongwith CMA No.08/2014.

(**Bansi Lal Bhat**)
Judge

Jammu
09.02.2015
Ram Murti