Before Vikas Bahl, J.

HAZARA SINGH—*Petitioners*

versus

BHAGWANTI AND OTHERS—*Respondents*

CR No.2558 of 2021

February 25, 2022

Constitution of India, 1950—Art.227—Code of Civil Procedure, 1908—O.6 Rl.4— O.VII, Rule 11—Hindu Succession Act, 1956—S.6—Plaintiff /respondent filed a suit challenging the judgment and decree dated 20.05.1986 alleging fraud and also relied upon S.6 of the Hindu Succession Act, giving coparcenry rights to daughters—Under the decree dated 20.05.1986 the existing coparceners had got their shares and because of severance of status, no coparcenery existed after 20.05.1986—Petitioners/defendants filed application under Order VII R.11 CPC for dismissal of suit, which was dismissed by the Trial Court—High Court in revision held that upon severance of shares pursuant to the decree dated 20.05.1986, there was no coparcenery in existence and the right to coparcenery was conferred upon daughters only vide amendment dated 25.12.2004 in the Hindu Succession Act—Court further held that ingredients of fraud were not pleaded or civil revision allowed, application under Order 7 Rule 11 allowed and plaint ordered to be rejected.

Held that, having heard the counsel for the parties and having gone through the case file, this Court finds substance in the argument of the counsel for the petitioners. Undisputedly, the decree in question is of dated 20.05.1986. Under the decree, all the then existing coparceners had got their shares as per their mutual understanding. Hence, there was a complete severance of status of the coparcenary as such. Therefore, after the date of passing of the decree, there cannot be any coparcenary in which the respondent/plaintiff could claim to join as co-sharer. As on the date when the decree was passed, the respondent/plaintiff was not having any interest in the property, not being a coparcener. Hence, the coparcenary, which stood severed long ago cannot be attempted to be reopened at the instance of a person who was stranger to the coparcenary at the time when the severance of status has taken place, and none of the then coparcener has ever raised a dispute.

(Para 4)

Further held that, although the counsel for respondent No.1 has submitted that respondent No.1 has duly pleaded fraud in the plaint and therefore, the factum of fraud would be a matter of proof, however, this Court does not find any substance in the argument. First of all, if at all there was any fraud qua any co-sharer, then the said co-sharer could raise the grievance. However, none of them has ever so alleged. Moreover, Order VI Rule 4 CPC requires that ingredients of the fraud, in case of a civil suit, have to be specifically pleaded as such. In the present case, 'fraud' has been mentioned only as a passing reference, along with another word 'collusion'. No further details of any fraud or collusion have been given.Hence, this is nothing but a clever formal drafting to create an illusion of a cause of action; which in reality does not exist. The very fact that the persons who were having any rights in the property at that time are alleged to be in collusion; excludes the fraud by either of them. Their effort to settle the property rights have been branded as collusion by the plaintiff. Moreover, none of them has come forward to allege fraud at any time during this period. The plaintiff cannot raise this plea with reference to her status as on 20.05.1986. Moreover, Hon'ble the Supreme Court in ***Rajendra Bajoria' case*** (supra) has categorically held that while considering application under Order 7 Rule 11 CPC, the Court has to see whether the plaintiff can be granted any relief in the matter. If the answer is in negative, then the suit has to be closed in its inception itself.

(Para 5)

Further held that, in view of the above, finding the impugned order passed by the trial Court to be unsustainable in the eyes of law, the same is set aside. The present petition is allowed and the application filed under Order 7 Rule 11 CPC is ordered to be allowed. Consequently the plaint is ordered to be rejected.

(Para 7)

R.S. Randhawa, Advocate,
Vansh Chawla and Kashish Sahni, Advocates
for the petitioners.

Edward Augustine George, Advocate and
Abishai George, Advocate,
for respondent No.1.

Rajbir Singh, Advocate
for respondent Nos.2 to 4.

RAJBIR SEHRAWAT, J. (Oral)

(1) This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 01.10.2021 passed by the Civil Judge (Junior Division), Dera Bassi (for short, the trial Court), vide which the application filed by the petitioners/defendant Nos.1 and 2 under Order 7 Rule 11 CPC was dismissed.

(2) It is submitted by the counsel for the petitioners that the application filed by the petitioners under Order 7 Rule 11 CPC has wrongly been rejected by the trial Court. It is not even in dispute that the judgment and decree which are under challenge in the suit are dated 20.05.1986. The property, even as per the pleadings in the plaint are referred as ancestral/coparcenary property. At the time of the passing of the above said decree, respondent No.1/plaintiff was not having any *locusstandi* qua the said property. She being a daughter got a right to be coparcener only w.e.f. 25.12.2004 as per the amendment in the Act. However, as on that date, there was no property in any coparcenary as such. Hence, it is submitted by the counsel for the petitioners that on the date when the present suit is filed, the respondent No.1/plaintiff cannot claim any right qua the property in question. Likewise, on the date when the impugned decree was passed by the Court, she was not having any other right to claim anything in the property. Hence, by any means, the plaintiff is not even having any actionable claim or any *locus standi* tofile the plaint challenging the decree. Hence, she cannot be granted any relief. The suit in a vexatious exercise. The counsel has relied upon the judgment of Hon'ble the Supreme Court rendered in ***Rajendra Bajoria and others*** versus ***Hemant Kumar Jalan and others, Civil Appeal Nos.5819-5822 of 2021 (arising out of SLP (C) Nos.2779-2782 of 2019), decided on 21.09.2021***, to contend that it is not the form of the pleadings, rather it is the content which is to be read in a meaningful manner, so as to find out whether there exists a real cause of action or the same is only illusionary created through clever drafting. The counsel has further submitted that the emphasis of law laid down by the Hon'ble the Supreme Court is to see whether the plaintiff can be granted any relief as such or not. Hence, it is submitted by the counsel for the petitioners that since the plaintiff is not having any right which can be claimed by her to have been violated by the decree as such, hence, she is not having a causeof action. Mere formal pleading qua the fraud, without any *locus standi* in the matter would not confer any cause of action upon the plaintiff/respondent No.1.

(3) On the other hand, the counsel for respondent No.1 has submitted that the plaintiff has duly pleaded in the plaint that the decree dated 20.05.1986 was based upon fraud and collusion. The fact whether there is any collusion or fraud or not, can be determined only after the trial. If the decree is declared to be nullity on proof of the fraud, then the property restores to its coparcenary status and hence, now respondent No.1 would be having a right being a coparcener. The counsel for respondent No.1 has relied upon the judgment of this Court rendered in ***Brijeshwar Swaroop and others*** versus ***Adish Aggarwal and others***[1].

(4) Having heard the counsel for the parties and having gone through the case file, this Court finds substance in the argument of the counsel for the petitioners. Undisputedly, the decree in question is of dated 20.05.1986. Under the decree, all the then existing coparceners had got their shares as per their mutual understanding. Hence, there was a complete severance of status of the coparcenary as such. Therefore, after the date of passing of the decree, there cannot be any coparcenary in which the respondent/plaintiff could claim to join as co-sharer. As on the date when the decree was passed, the respondent/plaintiff was not having any interest in the property, not being a coparcener. Hence, the coparcenary, which stood severed long ago cannot be attempted to be reopened at the instance of a person who was stranger to the coparcenary at the time when the severance of status has taken place, and none of the then coparcener has ever raised a dispute.

(5) Although the counsel for respondent No.1 has submitted thatrespondent No.1 has duly pleaded fraud in the plaint and therefore, the factum of fraud would be a matter of proof, however, this Court does not find any substance in the argument. First of all, if at all there was any fraud qua any co-sharer, then the said co-sharer could raise the grievance.However, none of them has ever so alleged. Moreover, Order VI Rule 4 CPC requires that ingredients of the fraud, in case of a civil suit, have to be specifically pleaded as such. In the present case, 'fraud' has been mentioned only as a passing reference, along with another word 'collusion'. No further details of any fraud or collusion have been given. Hence, this is nothing but a clever formal drafting to create an illusion of a cause of action; which in reality does not exist. The very fact that the persons who were having any rights in the property at that

[1] 2017 (4) RCR (Civil) 888

time are alleged to be in collusion; excludes the fraud by either of them. Their effort to settle the property rights have been branded as collusion by the plaintiff. Moreover, none of them has come forward to allege fraud at anytime during this period. The plaintiff cannot raise this plea with reference to her status as on 20.05.1986. Moreover, Hon'ble the Supreme Court in ***Rajendra Bajoria' case*** (supra) has categorically held that while considering application under Order 7 Rule 11 CPC, the Court has to see whether the plaintiff can be granted any relief in the matter. If the answer is in negative, then the suit has to be closed in its inception itself. The relevant para of the judgment of Hon'ble the Supreme Court reads as under:-

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> "15. It could thus be seen that this Court has held that reading of the averments made in the plaint should not only be formal but also meaningful. It has been held that if clever drafting has created the illusion of a cause of action, and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of notdisclosing a clear right to sue, then the Court should exercise its power under Order VII Rule 11 of CPC. It has been held that such a suit has to be nipped in the bud at the first hearing itself."
> xxx xxx xxx xxx

(6) This Court finds reliance of the counsel for the petitionerson the above said judgment to be well placed.

(7) In view of the above, finding the impugned order passed by the trial Court to be unsustainable in the eyes of law, the same is setaside. The present petition is allowed and the application filed under Order 7 Rule 11 CPC is ordered to be allowed. Consequently the plaint isordered to be rejected.

P.S. Bajwa