

Before Rajbir Sehrawat, J.

RAMPHAL — Appellants

versus

MAYA DEVI AND ANOTHER — Respondents

CR No.3077 of 2015

January 20, 2020

Constitution of India, 1950—Art. 227—Revision Petition—Civil Procedure Code, 1908— O.7 R.11 and S.9—Suit for declaration by respondent/plaintiff claiming ownership and possession of the suit land, which was being cultivated by the petitioner/defendant, who is plaintiff's son, with the former's permission—Co-plaintiff No.2 was owner in possession of half share in the suit land—Declaration was also sought that the Lok Adalat award dated 06.03.2006 was not binding upon the plaintiff as she never suffered the same—The award was outcome of a civil suit filed by the defendant which was placed before the Lok Adalat—The plaintiff never appeared or engaged any counsel for the Lok Adalat, no summons was ever served upon her—The award was obtained by misrepresentation and was a fraud upon the plaintiff as well as the Lok Adalat—On coming to know of the fraud, plaintiff had earlier filed another suit to challenge the award—However, the same was withdrawn on her son/defendant's assurance that he would not claim any benefit from the award, nor sell the suit land —Now the defendant was executing sale deed in favour of another person —Hence, the instant suit was filed—Petitioner/defendant took the plea since there was an award by the Lok Adalat, based on compromise between parties, the suit challenging the same was not maintainable—Remedy available to the plaintiff was to file a writ petition against the award as per Bhargavi Constructions case 2017 (4) RCR (Civil) 359—Besides, the earlier suit was withdrawn without permission to file a fresh one, and therefore barred on principle of res-judicata too—Held, under the provisions of Clause (d) of O.7 R.11 CPC, the trial Court has to look only into the averments made in the plaint—No disputed fact can be argued or considered by the trial Court while rejecting the plaint under O.7 R.11 CPC—Still further, S.9 CPC prescribes every suit involving civil rights can be filed before civil Court unless expressly or impliedly barred —Exclusion of maintainability of a civil suit is only an exception, which has to be strictly interpreted —On facts, no

provision barring the instant civil suit was shown to the Court—The judgment of the Supreme Court in Bhargavi Constructions case was distinguishable, as in that case plaintiff's presence before the Lok Adalat was never disputed—Whereas, in the instant case, the plaintiff's assertion is the award was passed by the Lok Adalat without her presence or notice, and was a fraud through impersonation—Therefore, plaintiff cannot be taken to be a part of those proceedings —Further held, it was well settled that any order based on fraud, even if obtained from the Supreme Court, can very well be challenged before civil Court —In the instant suit also challenge is to the fraud, and not to the Court as such, therefore it is maintainable —Further held, the principle of res-judicata being a mixed question of law and facts, cannot be taken as a ground for maintaining an application under O.7 R.11 CPC—for such application pleadings have to be taken as correct, only then the Court has to assess whether grounds under O.7 R.11 CPC exist or not—Still further, since the co-plaintiff was not a party either in the earlier suit or to the proceedings before Lok Adalat, the suit could not have been rejected—Petition dismissed.,

Held that, a bare perusal of Clause (d) of Order 7 Rule 11 CPC, upon which the sole reliance had been placed by learned counsel for the petitioner, shows that a plaint can be rejected by the trial Court only when it appears, from the averments made in the plaint, to be barred by any law. Hence, for the purpose of adjudicating an application under Order 7 Rule 11 CPC, the trial Court has to look into only the averments made in the plaint. The averments in the plaint have to be taken as correct for the time being, and for the purpose of order 7 Rule 11 CPC. No disputed question of fact can be argued or be considered by the trial Court for rejecting the plaint under Order 7 Rule 11 CPC.

(Para 7)

Further held that, needless to say; that above language of Section 9 CPC makes it clear that any suit filed by any person claiming infringement of any civil right, much less of any property right, is necessarily maintainable. Exclusion of maintainability of the civil suit is only an exception. That exception has to be interpreted strictly, otherwise, any liberal interpretation could lead to denial of an opportunity of being heard to an aggrieved person, which, in turn, is bound to be violative of Article 14 of the Constitution itself.

(Para 9)

Further held that, learned counsel for the petitioner has not

been able to draw attention of this Court to any statutory provision, which *per-se*, bars the present suit. However, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in ***Bhargavi Constructions*** (supra) to contend that the law laid down by the Supreme Court through a judgment, is also a law, which would have the effect of barring the civil suit in the present case. However, this court finds itself unable to agree with the submissions raised by learned counsel for the petitioner. There cannot be any dispute regarding the proposition of law laid down by the Hon'ble Supreme Court in the judgment rendered in ***Bhargavi Constructions*** (supra), which is being relied upon by learned counsel for the petitioner, however, this Court finds that the present case is totally distinguishable on the facts involved in that case. A reading of the judgment of the Supreme Court shows that the plaintiff in that case had never disputed his presence before the Lok Adalat. His only claim was, at the best, that he had not understood the scope of the suit or he was misled by some misrepresentation. The total absence before the Lok Adalat was not even pleaded in that case. Therefore, in that case, it was so held by the Supreme Court that if a person, who was; undisputedly; party to the proceedings before the Lok Adalat, was having any grievance against the award of the Lok Adalat, then he can approach the High Court through writ petition for challenging the said award. Even in that case Hon'ble Supreme Court had not left the affected party without a remedy but since the award of Lok Adalat was not appealable under the Legal Services Authorities Act, 1987, therefore, the aggrieved person was held entitled to remedy of writ petition. However, in the present case, the positive assertion and averment of the plaintiffs in the plaint is that she was not ever even served with any notice from the Court in the proceedings where the Lok Adalat had passed the said award. The said award was based upon fraud committed through impersonation of the plaintiff. In that situation, the plaintiff cannot even be taken to be a party to the said proceedings. Hence, no fault could be found with the suit filed by the plaintiff. Needless to say that it is well established law that any order based upon fraud, even if the same happened to be an order obtained from the Supreme Court; but through fraud, can very well be challenged before the civil Court. The legal principle to make such a suit maintainable is that in such a suit, the challenge is to the fraud, and not to the Court order as such. Law cannot even be seen to be standing on the side of fraudster, much less to protect him. In the present case, so far as the averments, for the purpose of application under Order 7 Rule 11 CPC, are concerned, it is not disputed that the

plaintiff has specifically asserted that she was impersonated. Hence, for this reason alone; her suit is perfectly maintainable. No fault could be found with the order passed by the trial Court in this regard.

(Para 10)

Further held that, so far as the second point raised by learned counsel for the petitioner qua res-judicata is concerned, this Court does not find any reason to interfere in the order passed by the trial Court. This is also a well settled law that res-judicata is a mixed question of law and facts. Any aspect, which is a mixed question of law and facts, cannot be taken as a ground for maintaining the application under Order 7 Rule 11 CPC. As mentioned above, for the purpose of Order 7 Rule 11 CPC, the pleadings have to be taken as correct and then only the Court has to assess whether anyone of the grounds mentioned in Order 7 Rule 11 CPC exists or not. Hence, this argument of learned counsel for the petitioner is also to be noted for only to be rejected.

(Para 11)

Further held that, this Court also found substance in the argument raised by learned counsel for the respondents that, at least, plaintiff No.2 was not a party either to the proceedings before the Lok Adalat or in the earlier suit, which was filed and withdrawn solely by plaintiff No.1. Since plaintiff No.2 is also a coplaintiff in the present suit, therefore, the present suit could not have been rejected under Order 7 Rule 11 CPC on the ground that the suit was not maintainable on account of res-judicata or being barred due to withdrawal of earlier suit by plaintiff No.1. As per the averments in plaint, even withdrawal of earlier suit was because the cause of action had ceased to exist due to the promise made by defendant, who happens to be only the son of plaintiff No.1. The present suit is filed on fresh cause of action.

(Para 12)

Ajay Jain, Advocate
for the petitioner

S.L. Barwala, Advocate
for the respondents

RAJBIR SEHRAWAT, J. oral

(1) This petition has been filed under Article 227 of the Constitution of India challenging the order dated 2.3.2015, passed by the Civil Judge (Junior Division), Hisar, whereby the application filed by the petitioner/defendant under Order 7 Rule 11 CPC has been

dismissed by the trial Court.

(2) Brief facts giving rise to the present petition are that the suit was filed by respondents/plaintiffs for declaration that plaintiff No.1 is the owner in possession of the suit land measuring 87 kanals 2 marlas, comprised in Khewat No. 341, Khatoni No. 514 as per *jamabandi* for the year 2000-01, situated at village Badhawar, Tehsil Barwala, District Hisar, and the defendant, who happens to be the son of plaintiff No.1, is cultivating the above said land with the prior permission of plaintiff No.1, the plaintiff No.2 is owner in possession of ½ share of the above said land as per oral family settlement, and further that the award dated 6.3.2006 passed by the Lok Adalat, was not binding upon her because she had never suffered any such award. In fact, the plaintiff No.1 herself is owner in possession of the suit land as per the *jamabandi* for the year 2000-01. The defendant, who happens to be her son, started cultivating the land with her permission. However, later on she came to know that a civil suit was filed by the petitioner/defendant. Ultimately, that suit was placed before the Lok Adalat. The plaintiff never appeared before the Lok Adalat, never engaged any counsel and never filed any written statement in that suit. In fact, the plaintiff was never even served with any summons from the Court in that suit. Hence, the award in that suit was obtained through impersonation of the plaintiff, thereby, committing a fraud upon the plaintiff as well as upon the Lok Adalat. When the plaintiff came to know of this fact, she had filed another Civil Suit No. 932/C of 2012. However, thereafter the defendant, who is the son of the plaintiff, assured that he would not sell the said property to any other person and without claiming any benefit from Award of Lok Adalat, would transfer the same in the name of the plaintiff No.1. Therefore, acting on this assurance of the defendant/petitioner, the said suit was withdrawn by plaintiff No.1. Thereafter the plaintiffs asked the defendant to transfer the above said land in her name. However, the defendant; instead of transferring the said land in the name of the plaintiffs had turned the plaintiff No.1 even out of the house. Not only that, the plaintiffs came to know that the defendant was executing sale deed in favour of another person. Hence, the present suit was filed.

(3) Arguing his case, learned counsel for the petitioner /defendant has submitted that since there exists an award passed by the Lok Adalat, which is based on a compromise between the parties, therefore, the suit challenging the award could not have been filed before the Civil Court. If at all, the plaintiff was aggrieved of the award

passed by the Lok Adalat, then the remedy available to the plaintiff was not to file civil suit, rather, to file a writ petition before the High Court, to challenge the award passed by the Lok Adalat, as per the judgment of the Supreme Court rendered in *Bhargavi Constructions and another* versus *Kothakapu Muthyam Reddy and others*,¹. Since this law point has been decided by the judgment of the Supreme Court, therefore, the suit filed by the plaintiff before the civil Court was barred by law. Hence, the application filed by the petitioner under Order 7 Rule 11 CPC should have been allowed by the trial Court. Still further, it is submitted that earlier also the plaintiff No.1 had filed another suit against the same award of the Lok Adalat, however, the same was withdrawn by the plaintiff No.1 without permission to file fresh suit, therefore, the present suit would be barred by res-judicata as well.

(4) On the other hand, learned counsel for the respondents /plaintiffs has submitted that the suit was rightly filed by the plaintiffs. The respondent/plaintiff No. 1 never appeared before any Court or Lok Adalat in the proceedings in which the award is stated to have arisen. So far as the other suit filed by the plaintiff No. 1 is concerned, that suit was withdrawn only when the defendant had agreed not to claim anything on the basis of the award. The plaintiff No.1, being mother of defendant believed the words of defendant and the cause of action had ceased to exist. However, the defendant had again started claiming the property on the basis of Award, giving rise to fresh cause of action. In any case, that suit was filed by one of the plaintiffs only and the plaintiff No.2 was not even a party either in the other suit filed by plaintiff No.1 or even in the suit in which the award was passed by the Lok Adalat. Therefore, by any means, the application filed under Order 7 Rule 11 CPC could not have been accepted by the trial Court. Hence, the same has rightly been dismissed by the trial Court. No fault could be found with the valid and well reasoned order passed by the trial Court.

(5) A bare perusal of the order passed by the trial Court shows that the trial Court has given specific reasons for declining the application filed by the petitioner/defendant. The trial Court has written that it is a case of impersonation and consequent fraud and not merely the mis-representation in obtaining the award from the Lok Adalat. Hence, the suit filed by the plaintiffs is maintainable. Qua the other

¹ 2017(4) RCR(Civil) 359

suit, which was withdrawn by the plaintiff No.1, the Court below has written that the plea of the defendant is to take the case within the scope of res-judicata. However, the question of res-judicata is a mixed question of law and facts, which could be decided only after the evidence is led by the parties and not at the stage of decision of the application under Order 7 Rule 11 CPC. Accordingly, the application was dismissed.

(6) Having considered the arguments of the respective counsel for the parties, this Court does not find any substance in the arguments raised by learned counsel for the petitioner/defendant. For the purpose of proper adjudication of the present case, it is necessary for reference to the provisions contained in Order 7 Rule 11 CPC, which is reproduced here as under :

Order VII Rule 11 – Rejection of plaint – The plaint shall be rejected in the following cases -

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the court and that refusal to extend

such time would cause grave injustice to the plaintiff.”

(7) A bare perusal of Clause (d) of Order 7 Rule 11 CPC, upon which the sole reliance had been placed by learned counsel for the petitioner, shows that a plaint can be rejected by the trial Court only when it appears, from the averments made in the plaint, to be barred by any law. Hence, for the purpose of adjudicating an application under Order 7 Rule 11 CPC, the trial Court has to look into only the averments made in the plaint. The averments in the plaint have to be taken as correct for the time being, and for the purpose of order 7 Rule 11 CPC. No disputed question of fact can be argued or be considered by the trial Court for rejecting the plaint under Order 7 Rule 11 CPC.

(8) Still further, Section 9 CPC, which is reproduced hereunder, prescribes that every suit involving civil rights, can be filed before the civil Court unless the same is expressly or impliedly barred by some law :-

“Section 9 – Courts to try all civil suits unless barred –
The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I – A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II – For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation-I or whether or not such office is attached to a particular place.”

(9) Needless to say; that above language of Section 9 CPC makes it clear that any suit filed by any person claiming infringement of any civil right, much less of any property right, is necessarily maintainable. Exclusion of maintainability of the civil suit is only an exception. That exception has to be interpreted strictly, otherwise, any liberal interpretation could lead to denial of an opportunity of being heard to an aggrieved person, which, in turn, is bound to be violative of Article 14 of the Constitution itself.

(10) Learned counsel for the petitioner has not been able to draw attention of this Court to any statutory provision, which *per-se*, bars the

present suit. However, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in *Bhargavi Constructions* (supra) to contend that the law laid down by the Supreme Court through a judgment, is also a law, which would have the effect of barring the civil suit in the present case. However, this court finds itself unable to agree with the submissions raised by learned counsel for the petitioner. There cannot be any dispute regarding the proposition of law laid down by the Hon'ble Supreme Court in the judgment rendered in *Bhargavi Constructions* (supra), which is being relied upon by learned counsel for the petitioner, however, this Court finds that the present case is totally distinguishable on the facts involved in that case. A reading of the judgment of the Supreme Court shows that the plaintiff in that case had never disputed his presence before the Lok Adalat. His only claim was, at the best, that he had not understood the scope of the suit or he was misled by some misrepresentation. The total absence before the Lok Adalat was not even pleaded in that case. Therefore, in that case, it was so held by the Supreme Court that if a person, who was; undisputedly; party to the proceedings before the Lok Adalat, was having any grievance against the award of the Lok Adalat, then he can approach the High Court through writ petition for challenging the said award. Even in that case Hon'ble Supreme Court had not left the affected party without a remedy but since the award of Lok Adalat was not appealable under the Legal Services Authorities Act, 1987, therefore, the aggrieved person was held entitled to remedy of writ petition. However, in the present case, the positive assertion and averment of the plaintiffs in the plaint is that she was not even served with any notice from the Court in the proceedings where the Lok Adalat had passed the said award. The said award was based upon fraud committed through impersonation of the plaintiff. In that situation, the plaintiff cannot even be taken to be a party to the said proceedings. Hence, no fault could be found with the suit filed by the plaintiff. Needless to say that it is well established law that any order based upon fraud, even if the same happened to be an order obtained from the Supreme Court; but through fraud, can very well be challenged before the civil Court. The legal principle to make such a suit maintainable is that in such a suit, the challenge is to the fraud, and not to the Court order as such. Law cannot even be seen to be standing on the side of fraudster, much less to protect him. In the present case, so far as the averments, for the purpose of application under Order 7 Rule 11 CPC, are concerned, it is not disputed that the plaintiff has specifically asserted that she was impersonated. Hence, for this reason

alone; her suit is perfectly maintainable. No fault could be found with the order passed by the trial Court in this regard.

(11) So far as the second point raised by learned counsel for the petitioner qua res-judicata is concerned, this Court does not find any reason to interfere in the order passed by the trial Court. This is also a well settled law that res-judicata is a mixed question of law and facts. Any aspect, which is a mixed question of law and facts, cannot be taken as a ground for maintaining the application under Order 7 Rule 11 CPC. As mentioned above, for the purpose of Order 7 Rule 11 CPC, the pleadings have to be taken as correct and then only the Court has to assess whether anyone of the grounds mentioned in Order 7 Rule 11 CPC exists or not. Hence, this argument of learned counsel for the petitioner is also to be noted for only to be rejected.

(12) This Court also found substance in the argument raised by learned counsel for the respondents that, at least, plaintiff No.2 was not a party either to the proceedings before the Lok Adalat or in the earlier suit, which was filed and withdrawn solely by plaintiff No.1. Since plaintiff No.2 is also a co- plaintiff in the present suit, therefore, the present suit could not have been rejected under Order 7 Rule 11 CPC on the ground that the suit was not maintainable on account of res-judicata or being barred due to withdrawal of earlier suit by plaintiff No.1. As per the averments in plaint, even withdrawal of earlier suit was because the cause of action had ceased to exist due to the promise made by defendant, who happens to be only the son of plaintiff No.1. The present suit is filed on fresh cause of action.

(13) In view of the above, finding no merit in the present petition, the same is dismissed. However, anything observed hereinabove shall not have any expression on merits of the case during the trial of the same, if any.

Tribhuvan Dahiya