

Rohtash Versus Rajkumar

-1-

CIS No. CS-176-2017

CNR No. HRNRB0-000235-2017

**IN THE COURT OF MAINKA SINGH, ADDITIONAL CIVIL
JUDGE (SENIOR DIVISION), KANINA**

Civil Suit No. : 176 dated 08.05.2017
CIS No. : CS-176-2017
CNR No. : HRNRB0-000235-2017
Date of Application : 26.10.2022
Date of Decision : 22.03.2023

Rohtash son of Hoshiyar Singh son of Bholu Resident of Village
Khairana, Tehsil Kanina, District Mahendergarh.

.....Plaintiff

Versus

Rajkumar son of Ishwar Singh son of Harsukh Resident of Village
Khairana, Tehsil Kanina, District Mahendergarh.

.....Defendant

**Application for consolidation of the present case suit with the
another civil suit**

Present : Sh. Kunal and Sh. Ved Parkash, Advocates for the
plaintiff.
Sh. Vinod Kumar, Advocate for the defendant.

ORDER:

By way of this order, I shall decide application filed under
Order VII Rule 11 CPC, by the defendant Rohtash for rejection of the
plaint,

The applicant/defendant has submitted that another civil

Rohtash Versus Rajkumar

-2-

CIS No. CS-176-2017

CNR No. HRNRB0-000235-2017

suit bearing No.176/2017 which was filed on 08.05.2017 on the same cause of action between same parties and for the same property, but despite its pendency, the present suit has also been filed. That, in this manner abuse of process of law has been done and so the present suit is not maintainable. It is alleged that by concealing the fact of other suit, the plaintiff of this suit has not come to the Court with clean hands since the disputed agreement to sell is challenged in the above-mentioned previously instituted civil suit. On these grounds, rejection of the plaint has been prayed for.

In reply to the instant application, the plaintiff have submitted that there are separate causes of action in both these suits. Further, that the civil suit No.176-2017 has not been decided and that the application is filed only to prolong the proceedings of the suit. It is contended that the defendant has availed several effective opportunities to lead his evidence but has failed to conclude the evidence. So, it is prayed that the application is not maintainable and is liable to be dismissed.

Rival arguments were addressed by the learned counsel for

the parties.

4. I have duly heard the arguments and have gone through the record. The suit in hand is filed by the plaintiff, claiming the relief of specific performance of agreement to sell dated 18.01.2016, whereas the other suit bearing No.176-2017 is filed for declaration that the same agreement to sell be declared as null and void.

It is settled law that for the purpose of deciding application under this provision, only the averments of the plaint are to be seen and not the defence of the defendants. As per Order VII Rule 11 CPC, the following grounds are provided for rejection of plaint:-

- (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 returned upon paper in sufficiently stamped, and the plaintiff on being required by the Court to supply 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.

So, only upon perusal of contents of the plaint of this suit, it is not visible that it has talked about the previous suit No.176/17. Thus, merely on the basis of the plaint, this suit is not apparently barred by any law. Whatever grounds are raised in the present application by the defendant could be grounds for non-maintainability of the suit, but not rejection of plaint under Order VII Rule 11 CPC. Hence, since the application does not fall in the parameters of this provision, therefore, without commenting on merits of the suits, this application stands dismissed.

At this stage, it is brought to the notice of the Court by way of the above-mentioned application that another civil suit bearing No.205 of 2017 titled as ‘ Rajkumar Vs. Rohtash’ is also pending today before the Court. On perusal of the present suit and the other one bearing No.205, detailed above, it is seen that the suit No.205 pertains to the relief of specific performance of agreement to sell dated 18.01.2016 relating to the land comprised in khewat No.97 khatoni No.102 killa No.11//2 (4-16), 3(8-0), 9(8-16), 11(4-14) and 12(8-0) total measuring 34 kanal 6 marla to the extent of ¼ share measuring 8 kanal 11 marla

Rohtash Versus Rajkumar

-5-

CIS No. CS-176-2017

CNR No. HRNRB0-000235-2017

situated in village Khairana Tehsil Kanina District Mahendergarh. The parties to the said suit are Raj Kumar as plaintiff and Rohtash as defendant. At the same time, in the present suit bearing No.CS-176-2017, the parties are Rohtash as plaintiff and Raj Kumar as defendant, and the relief herein pertains to declaration that the same agreement to sell dated 18.01.2016 be declared as null and void and unsustainable , with additional relief of permanent injunction that no stake be allowed over the said disputed agreement to sell and that if a sale deed is executed on the basis of the same, it be declared as illegal, nul and void. These facts make it sufficiently clear that the two suits are very much interrelated and shall have bearing upon each other when they shall be decided. Also, different judgment in these two civil suits could be prejudicial to the rights of the parties to the suits. Thus, before proceeding further, in the common interest of the parties and for more effective adjudication, it is hereby ordered that the Civil Suit bearing No.CS-176-2017 is directed to be consolidated with the Civil Suit No.CS-205-2017. Henceforth, the proceedings shall be taken up commonly in these suits.

Rohtash Versus Rajkumar

-6-

CIS No. CS-176-2017

CNR No. HRNRB0-000235-2017

Copy of this order be placed on the record of the Civil Suit No.CS-205-2017, and henceforth civil suit bearing No.176-2017 be deemed to be suit No.1 and the one bearing No.CS-205-2017 be deemed to be suit No.2, for convenience.

Now to come up on **11.04.2023**.

Pronounced in open Court :

(Mainka Singh),
Additional Civil Judge (Sr. Division),
Kanina. 22.03.2023
UID No. HR-0314

Note : All the Six (06) pages of this order have been dictated, checked and signed by undersigned.

(Manoj SG-III)

(Mainka Singh),
Additional Civil Judge (Sr. Division),
Kanina. 22.03.2023
UID No. HR-0314

Mainka Singh,
ACJ(SD), Kanina. 22.03.2023
UID No. HR-0314