

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.1933 of 2022 (O&M)
Reserved on : 16.05.2022
Date of Decision : 20.05.2022

Rakesh Khanna @ Babbu

....Petitioner

VERSUS

Gulzari Lal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.P.S. Bal, Advocate for the petitioner.

ALKA SARIN, J.

The present civil revision under Article 227 of the Constitution of India has been filed impugning the order dated 17.02.2022 (Annexure P-7) vide which the application preferred by the defendant no.1-petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has been dismissed.

Brief facts relevant to the present *lis* are that the plaintiff-respondent no.1 filed a suit for declaration to the effect that the plaintiff is absolute owner and in possession of the House No.B-I 37, as described in the plaint, and further for permanent injunction restraining the defendants from alienating the above mentioned property. Defendant no.1-petitioner herein filed an application (Annexure P-4) under Order VII Rule 11 CPC for rejection of the plaint on the grounds; firstly, that the same is barred by limitation; secondly, that the suit is barred by the provisions of the Prohibition of Benami Property Transactions Act, 1988; and thirdly, that it is under-valued. It was stated in the application that the sale deed in question was executed on 18.05.1999, which was within the knowledge of plaintiff-

respondent no.1, and that the plaintiff-respondent no.1 and defendant no.1-petitioner have a family dispute since 2013. It was further stated that in 2016 the defendants were dispossessed by the plaintiff. However, the plaintiff had not filed any civil suit at that point of time. It was further averred that the suit was under-valued. A reply (Annexure P-5) was filed contesting the application. The Trial Court vide the impugned order dated 17.02.2022 (Annexure P-7) dismissed the application. It has been noticed in the impugned order that the question of affixing the court fees was given up and not pressed. *Qua* the question of limitation, the Trial Court held that the same was a mixed question of law and facts. *Qua* the question of the suit being barred by the provisions of the Prohibition of Benami Property Transactions Act, 1988, the Trial Court came to the conclusion that the same can be gone into only after appreciating the evidence.

Learned counsel for the defendant no.1-petitioner has vehemently contended that the plaintiff-respondent no.1 in the present case has turned his back on his wife and children and that he was prompted by some individuals to do so. It is further the contention that the plaintiff-respondent no.1 had earlier filed a civil suit for permanent injunction restraining the defendants therein from interfering in the peaceful possession of House Nos.B-VIII/343 and B-VIII/348, situated in Sethia Mohalla, Faridkot, which suit was eventually withdrawn on the basis of a compromise. Learned counsel for the defendant no.1-petitioner would contend that the present suit is barred by the provisions of Order II Rule 2 CPC inasmuch as in the earlier suit, which was filed against the wife and son by the plaintiff-respondent no.1, no plea *qua* the present property was raised.

It is further the contention that the sale deed dated 18.05.1999 sought to be challenged was within the knowledge of plaintiff-respondent no.1 and hence, the suit was clearly barred by limitation.

I have heard learned counsel for the defendant no.1-petitioner.

On a pointed query by this Court as to whether the facts as narrated by the counsel for the defendant no.1-petitioner were apparent from a meaningful reading of the plaint, learned counsel has stated that the said facts were clearly mentioned in the application (Annexure P-4) filed under Order VII Rule 11 CPC. At the time of arguments, learned counsel for the defendant no.1-petitioner has pressed two arguments primarily that the suit is barred on the ground of limitation and secondly that the suit is barred under Order II Rule 2 CPC. Taking up the second argument of learned counsel for the defendant no.1-petitioner, a perusal of the impugned order clearly reveals that the said argument was not raised before the Trial Court. There were three arguments raised before the Trial Court as noticed above; firstly, that the suit was barred by limitation; secondly, that the same was barred by the provisions of Prohibition of Benami Property Transactions Act, 1988; and thirdly, that proper court fees had not been affixed. The question of court fees was not pressed before the Trial Court. The argument now being raised for the first time, hence, deserves to be rejected on this score alone. Further the question whether the suit is barred under Order II Rule 2 CPC cannot be possibly gone into without appreciation of evidence.

The argument raised by learned counsel for the defendant no.1-petitioner that the suit is barred by limitation also deserves to be rejected for the following reasons.

It is trite that at the time of contesting the application under Order VII Rule 11 CPC only the contents of the plaint are to be seen and not those of the application under Order VII Rule 11 CPC or any other pleadings.

Hon'ble Supreme Court in case of **Salim D. Agboatwala & Ors. vs. Shamalji Oddhavji Thakkar & Ors.** [AIR 2021 SC 5212] has held as under :

“10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”

In case of **Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors.** [2018(5) RCR (Civil) 163], the Supreme Court held as under :

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The

plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original

defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

Further in the case of **Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi [2019(1) RCR (Civil) 366]**, it has been held as under:

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the

plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

In view of the law laid down by the Hon'ble Supreme Court as well as on a meaningful reading of the plaint, it cannot be said that the suit is barred by limitation.

In view of the discussion above, I do not find any illegality or infirmity in the impugned order dated 17.02.2022 (Annexure P-7) passed by the Trial Court. There is no merit in the present revision petition which is accordingly dismissed.

Dismissed.

(ALKA SARIN)
JUDGE

20.05.2022
jk

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO