

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.2314 of 2013 (O&M)

Date of decision : 15.09.2015

Tarlochan Singh

...Petitioner

Versus

Tejpal Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sahil Khunger, Advocate for the petitioner.

Mr. Sandeep Punchhi, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the impugned order dated 26.10.2012, whereby application filed by the petitioner-defendant under Order 7 Rule 11, has been dismissed.

Mr. Sahil Khunger, learned counsel appearing on behalf of petitioner submits that frame of the suit ex facie reveals that same is barred by limitation for the following reasons:-

1. Declaration of the mutation and the gift deed dated 08.10.1970, has been sought.
2. The respondent-plaintiff has claimed 1/6th share in the estate of gift deed executed by grandmother of the parties to the lis.

The petitioner-defendant is admittedly in possession from the

date of mutation, effected on the basis of the gift deed and, therefore, suit in the year 2010 was hopelessly barred by limitation. In support of his contention, he has relied upon following judgments:-

1. *2005(4) RCR (Civil) 334, Popat and Kotecha Property Vs. State Bank of India Staff Association.*
2. *2007(10) SCC 59, Ram Parkash Gupta Vs. Rajiv Kumar Gupta & ors.*
3. *2008(2) RCR (Civil) 872, Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma & Ors.*
4. *2007(5) SCC 614, Hardesh Ores Pvt. Ltd. Vs. M/s Hede and Company*
5. *2014(2) RCR (Civil) 36, Surjit Kaur Gill & anr. Vs. Adarsh Kaur Gill & anr.*

to contend that rigor of limitation should be strictly applied to the facts and circumstances of the case. He further submits that from the bare averments made in the suit, it is ex facie proved that suit is barred by limitation and in order to lend support of the aforementioned submission, he has drawn attention of this Court to following paragraphs:-

“1. That Smt. Harnam Kaur was not competent to execute any alleged gift deed stated above. Moreover, the said gift deed is the forged and fabricated and is not executed by Smt. Harnam Kaur out of her free volition. The thumb impression of Smt. Harnam Kaur is also forged and fabricated. The plaintiff is also the grand son of Smt. Harnam Kaur but there is no reason given in the gift that why the plaintiff can be excluded from the estate of Harnam Kaur, though Harnam Kaur had equal love and affection with the plaintiff and the defendants. The defendant No.2 is the daughter in law of Smt. Harnam Kaur whereas the defendants No.3 and 4 were the grand daughters of Smt. Harnam Kaur. The defendants No.5 to 7 are the sons of Smt. Harbans Kaur daughter of Harnam Kaur, who had since expired.

2. That at the time of sanctioning the mutation on the

basis of alleged gift deed dated 08.10.1970, no statement has been recorded by the Revenue officials before sanctioning the alleged mutation. Infact as per law, it is mandatory to call all the legal heirs of Smt. Harnam Kaur before sanctioning the mutation on the basis of the alleged gift deed. The mutation was sanctioned at the back of the plaintiff and as such is not binding on the rights of the plaintiff in the estate of Harnam Kaur. The alleged mutation is also liable to be ignored or set aside. The plaintiff is also entitled to recover the share of produce to the extent of 1/6th share from the defendant No.1, who is in unlawful possession of the suit land.

3. That Smt. Harnam Kaur has no legal right to execute the alleged gift deed in favour of the defendant No.1 and the said gift deed is the outcome of fraud and due deliberation and is liable to be set aside.

4. That there is also another litigation regarding some other land between the plaintiff and the defendants.

5. That the plaintiff from time to time requested the defendants to admit their ownership rights over the suit land to handover the actual possession of 1/6th share in the suit land, but the defendants always linger on the matter and because of relations, the plaintiff always acceded to the request of the defendants and lastly about a month ago, the defendants flatly refused to admit the ownership rights of the plaintiff over the suit land and rather threatened the plaintiff to alienate the suit land and claimed themselves to be the exclusive owner of the same. Then the plaintiff immediately approached the Revenue Department and obtained the certified copy of the jamabandi, from where it is revealed regarding the forged and fabricated gift deed. Thus clouds have caste over the valuable rights of the plaintiff which necessitates him to file the present suit.

6. That the cause of action has arisen to the plaintiff against the defendants about a month ago, when the

defendants flatly refused to admit the claim of the plaintiff and threatened the plaintiff to alienate the suit land at Village Peer Asmile Khan, Tehsil and District Ferozepur.”

therefore, as per submission that trial Court has committed illegality and perversity.

Mr. Sandeep Punchhi, learned counsel appearing on behalf of respondent No.1 submits that question of limitation is a mixed question of law and fact and since the trial Court has already framed issues and at the best same can be directed to be treated as preliminary issues.

He further submits, that it is yet to be ascertained, whether suit filed is within a period of limitation or not and, therefore, the impugned order does not warrant any interference while exercising jurisdiction under Article 227 of the Constitution of India. He further submits that plaint cannot be rejected on the ground of limitation at the best, it can be dismissed that too after parties leads evidence in this regard.

I have heard learned counsel for parties and appraised the paper book.

It would be apt to reproduce the Order 7 Rule 11 Clause D of Code of Civil Procedure which read thus:-

*“11. Rejection of plaint: xxx xxx
(a) to (c) xxx xxx xxx xxx
(d) where the suit appears from the statement in the plaint to be barred by any law.”*

On the reading of the plain language, it is deciphered that plaint is liable to be rejected, where suit appeared to be barred by law of limitation. The Limitation Act is a statute, which would fall within the realm of law. On going through the averments made in paragraphs of the suit (Supra), there is no

reference of the date of death of grandmother and rather it has been mentioned that gift deed was executed on 08.10.1970 and the mutation was also sanctioned thereafter.

No explanation has come forth as to how the plaintiff acquired the knowledge of the gift deed in the year 2010, except the bald averments made in paragraph 9 and acquired the knowledge of gift deed when the defendants refused to accept the claim of the plaintiff. Revenue record does not show the property at the hands of the parties rather, as joint much less, they are co-sharer. Had it been so, the suit would have been for partition not for declaration, as noticed above.

The ratio decidendi culled out by Hon'ble Supreme Court leaves no manner of doubt that a duty is cast upon the Court to see whether the point of limitation is prima facie admissible or not. In case perusal the pleadings of suit, it is prima facie found to be beyond period of limitation, the provision of Order 7 Rule 11 cast mandate upon the Court, to reject the plaint.

For the sake of facility, I lend support to the judgment rendered by Hon'ble Supreme Court in *Kamlesh Babu and ors. Vs. Lajpat Rai Sharma and ors.* 2008(2) RCR (Civil) 872 and para read thus as:-

“21. It is no doubt true, as was pointed out by this Court in the case of Balasaria Construction (P) Ltd. (Supra) and also in Narne Rama Murthy's case (Supra), that if the plea of limitation is a mixed question of law and fact, the same cannot be raised at the appellate stage. We have no problem with the said proposition of law. What we are concerned with is whether the said proposition is applicable to the facts of this case. In this case the plea of limitation had been raised in the written statement and though no specific issue was framed in respect thereof, a decision was given thereupon by

the learned trial Court. Apart from Section 3(1) of the Limitation Act, even Order 7 (ACA379o) Rule 11 (ACA379o7R)(d) of the Civil Procedure Code casts a mandate upon the court to reject a plaint where the suit appears from the statement in the plaint to be barred by any law, in this case by the law of limitation. Further, as far back as in 1943, the Privy Council in the case of Lachhmi Sewak Sahu v. Ram Rup Sahu & ors. (AIR 1944 Privy Council 24) held that a point of limitation is prima facie admissible even in the court of last resort, although it had not been taken in the lower courts.”

In view of ratio decidendi culled out and as well as reasons mentioned above, averments made in the suit lacks specific pleading as how it is within period of limitation, the impugned order is set aside. The application filed under Order 7 Rule 11 of CPC is allowed.

Plaint filed by respondent-plaintiff is hereby rejected.

Civil Revision stands allowed.

15.09.2015

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**(AMIT RAWAL)
JUDGE**