

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

**CR No.5314 of 2015
Date of decision: 06.10.2015**

Oma and others

... Petitioners

Vs.

Mani Ram and others

... 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?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Kuldip Singh, Advocate, for the petitioners.

Mr. M.S.Dalal, Advocate, for respondents No.1 and 2.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned order dated 07.05.2015, (Annexure P-5), whereby, the application filed at the instance of petitioner-defendants, under Order 7 Rule 11, CPC seeking rejection of the plaint on the following grounds:-

- i) suit ex facie time barred;
- ii) not maintainable; and
- iii) civil Court has no jurisdiction, has been declined.

Mr. Kuldip Singh, learned counsel appearing on behalf of the petitioner-defendants submits that by virtue of gift deed executed on the basis of the resolution passed in the year 1984, the suit ex facie was barred by law of limitation. Even as per the provisions of

Sections 5, 6 and 13 of the Punjab Village Common Land Act, as applicable to Haryana, the civil Court did not have jurisdiction, thus, the trial Court has committed illegality and perversity, in declining the application, by holding that it is mixed question of law and facts.

Mr. M.S.Dalal, learned counsel appearing on behalf of respondents No.1 and 2 submits that suit has been filed on behalf of inhabitants seeking possession, though the petitioner-defendants are also alleging their possession by relying upon *jamabandi* for the year 1984-85. He further submits that there is also allegation of fraud, mis-representation and collusion owing to the fact that vide resolution of 1984, some *kith and kins* of Panchayat member have been benefited and there is no limitation to challenge such act, which is result of fraud, mis-representation and collusion.

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

It is a matter of record that petitioner-defendants have filed written statement and case is listed for filing of replication. Issues, in the aforementioned case, are yet to be framed.

The trial Court dismissed the application by holding that issue of jurisdiction and limitation is mixed question of law and facts and can only be decided when the parties lead evidence in support of their respective case. Since, the petitioner-defendants have raised numerous preliminary objections *vis-a-vis* jurisdiction and limitation, I deem it appropriate to direct the trial Court, that in case, issues are

framed qua jurisdiction and limitation, same be treated as preliminary and parties to the lis be afforded two-two opportunities each, to lead evidence, in support of their claim and decide the same, in accordance with law.

With the aforementioned observations, the order under challenge is modified to the aforesaid extent. It is directed that trial Court shall treat the issues of limitation and jurisdiction as preliminary and thereafter, shall decide the suit, if need be.

The revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

October 06, 2015
savita