

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.8831 of 2014(O&M)
Date of decision: 15.1.2015

Mohinder Singh

....Petitioner

Versus

Indra Gupta and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Narinder Kumar Vadehra, Advocate for the petitioner.

G.S.Sandhawalia J.(Oral)

Civil Misc. No.1057-CII of 2015

Prayer made in the present Civil Misc. Application for placing on record the dated 19.9.2000 passed by the Civil Judge (Junior Division), Patiala Annexure P/8 in civil suit titled Mohinder Singh Vs. Gurbax Singh and others (Annexure P/8) is allowed.

Annexure P/8 is taken on record.

Office to tag the same at appropriate place in the file.

The Civil Misc. Application stands disposed of accordingly.

Civil Revision No.8831 of 2014

1. Challenge in the present revision petition filed under Section 115 of the Code of Civil Procedure is to the order dated 21.11.2014 (Annexure P/7) whereby the application filed by defendant no.1 under Order 7 Rule 11 CPC for rejection of plaint has been dismissed by the Civil Judge (Junior Division), Patiala.

2. The trial Court has come to the conclusion that the issue as to whether the suit was barred by limitation is connected with the merits of the case and is required to be decided along with other issues since fraud has been alleged by the plaintiff/respondent and accordingly application for rejection of plaint has been dismissed.

3. The case has a chequered history and the facts will necessarily

have to be gone into in detail.

4. The dispute in the civil suit filed by the plaintiff/respondent no.1 is to the decree dated 19.9.2000 wherein the petitioner/defendant had filed a civil suit against his brothers for declaration that he was owner of plot bearing No.1493 measuring 160 sq. yards situated at Kingsway Camp Redevelopment Scheme, Delhi. The declaration was also sought that he was owner in possession of 1/6 share of Smt. Mukandi Bai in agricultural land falling in village Jodhpur, Tehsil and District Patiala. The suit was based on the will executed by Mukandi Bai dated 5.12.1978 and registered with Sub Registrar, Patiala on 1.1.1979. It is alleged that Mukandi Bai had died on 28.8.1984 leaving the present petitioner to be absolute owner of the property at Delhi and having 1/8th share in the land at Patiala. The plot at Delhi was alleged to have been allotted vide letter dated 11.6.1984 by the Delhi Development Authority, New Delhi.

5. The respondent no.1 had filed a suit alleging that Mukandi Bai had three daughters and the plot in Kingsway Camp Redevelopment Scheme had been alienated vide registered will dated 19.7.1984 which was registered with the Sub Registrar, Delhi. An agreement to sell had also been executed on the same date and thus the plaintiff had purchased the said property and the legal heirs of Mukandi Bai had known about the said sale but by abusing process of law played a judicial fraud. It was pleaded that Mukandi Bai was occupant of plot No.E-194, Outram Lane, Delhi which was demolished by the Delhi Development Authority under the redevelopment scheme and accordingly plot No.1493 was allotted in Kingsway Camp Redevelopment Scheme which had been sold and disposed of as noticed above and thus the plaintiff therein had filed the suit for grant of injunction on 10.2.2006 restraining the present petitioner from getting the property mutated in favour of any of the party. Probate proceeding was also filed in Delhi regarding the will in favour of Indra Gupta.

6. Counsel for the petitioner has thus vehemently submitted that in the civil suit filed in 2001, written statement had been filed by the Delhi Development

Authority and by the petitioner wherein the pendency of the earlier litigation dated 19.9.2000 had been mentioned. It was thus submitted that the present suit was barred by limitation as it was only filed in the year 2009 and therefore, the Court was not right in rejecting the application for rejection of plaint on account of the suit being barred by limitation.

7. After hearing the counsel for the petitioner, this Court is of the opinion that keeping in view the cumulative effect, it would be clear that respondent no.1's rights had accrued by a registered will and an agreement to sell executed by Mukandi Bai, mother of the petitioner. The suit was filed and got decreed against the legal representatives and regarding property in question and the purchaser was left out from the civil suit which had been filed in Patiala for the property at Delhi and for the rights of which respondent no.1 is seeking a declaration regarding the property sold to her. A reading of the suit as such discloses a cause of action. It is settled principle that for rejection of plaint only the same is to be taken into consideration and not the defence. Respondents no.1 has thus made out a case for cause of action and it cannot be said that there is no cause of action since her interest in immovable property is involved and decree dated 19.9.2000 would come in her way whereby declaration has been granted to the present petitioner in her absence.

8. It is held by this Court in **Rajesh Grover Vs. Smt. Rita Khurana and others 2006(2) PLR 244** that rejection of plaint is only to be done in extreme cases. Reference can also be made to observations of the Apex Court in **Popat & Kotecha Property Vs. State Bank of India Staff Association (2005) 7 SCC 510** that only where the litigation is totally frivolous, the Court would reject the plaint. The relevant observations read as under:-

“17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order 10 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of

the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”

9. In **Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee** (2012)8 SCC 706.

The relevant observations read as under:-

“It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in [Raptakos Brett & Co. Ltd. vs. Ganesh Property](#) 1998(2) R.C.R. (Rent) 353 : 1998 (4) R.C.R. (Civil) 208 : (1998) 7 SCC 184 and [Mayar \(H.K.\) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others](#) (2006) 3 SCC 100.

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8) While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

10. The observation of the trial court that it is a mixed question of facts regarding issue of limitation is thus justified keeping in view the detailed background of the case as noticed above. In such circumstances this Court is of

the opinion that order which has been passed by the trial Court is not liable to be interfered with by this Court. However, nothing observed herein shall be deemed to be an expression on merits of the case since it is only for the purpose of deciding the present revision petition.

11. Accordingly, the present revision petition is dismissed.

15.1.2015
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(G.S.SANDHAWALIA)
JUDGE