

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 146 of 2016

Date of Decision: 12.01.2016

Surjit Kaur and Others

... Petitioner(s)

Versus

Hari Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. R.S.Longia, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India is challenge to order dated 2.12.2015, whereby application under Order 7 Rule 11 CPC for rejection of the plaint was dismissed.

Learned counsel for the petitioners submitted that rejection of plaint was sought primarily on two grounds that required Court fee has not been affixed on ad valorem basis and suit of the plaintiff was not within period of limitation as the document was relating to the year 1952 and the same was 63 years old document.

Having considered the submissions made by learned counsel for the petitioners, this Court is of the considered view that the trial Judge has rightly considered the controversy and observed that the

applicant had taken the plea that document dated 26.7.1952 was not in his knowledge and when the said document came to his knowledge, he had taken appropriate legal action for the same. More so, the document was transfer deed (gift deed) only.

Learned counsel for the petitioners has submitted that required Court fee on ad valorem basis was to be affixed.

Having considered the submissions made by learned counsel for the petitioners, this Court is of the view that the nature of the document itself is disputed and the same shall be decided after leading of evidence by the parties during the trial of the case. The fact regarding knowledge of the applicant is again a mixed question of fact, which shall be appreciated by the Court below after leading of evidence in the case. It was not a case of rejection of the plaint under Order 7 Rule 11 CPC and the same has rightly been declined. If at a later stage, after leading of evidence, the Court considers that the document cannot be taken into consideration having not been filed within the period of limitation, the suit of plaintiff can be dismissed. Similarly, after deciding the nature of document if the Court considers that required Court fee has not been affixed, that order can still be passed by the court below at the time of final decision of the case. But there is no ground for calling for interference by this Court, at this stage, by way of present petition and the same stands dismissed, in limine.

(Shekher Dhawan)
Judge

January 12, 2016

"DK"