

C.R. No. 2380 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 2380 of 2016

Date of Decision: 7.11.2016

Bimla Devi

---Petitioner

vs.

M/s Surja Ram and sons and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Abhinav Sood, Advocate
for the petitioner**

Rekha Mittal, J.

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 28.1.2016 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Dabwali whereby application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure (in short "CPC") for rejection of the plaint, has been dismissed.

M/s Surja Ram and sons, Malout through Sh. Amar Kumar, its partner has filed a suit for declaration that plaintiff No. 1 is the owner in possession of land measuring 87 kanals 1 marla, detailed in head note of the plaint; the judgment and decree dated 1.8.1990 passed in Civil Suit titled “Bimla Devi vs. Parlahad Kumar” and judgment and decree dated 8.9.1990 in Civil Suit titled “Amar Kumar and another vs. Parlahad Kumar” are illegal, null and void, ineffective and inoperative on rights of plaintiff No. 1. Further challenge has been laid to mutation bearing No. 12862 sanctioned on the basis of judgment and decree dated 8.9.1990 with consequential relief of permanent injunction.

Bimla Devi, petitioner/defendant No. 1 filed the instant application primarily on the ground that earlier Ashok Kumar and Ashwani Kumar sons of Prahlad Kumar filed a suit claiming that land on which a Cotton Ginning and Pressing Factory has been constructed and the business is being conducted in the name and style of M/s Surja Ram Cotton Ginning and Pressing Factory, Mandi Kalanwali is owned and possessed by the plaintiffs to the extent of $\frac{1}{2}$ share and the remaining share belongs to Amar Kumar. In the said suit, Amar Kumar was sued as a

proforma defendant. The suit was dismissed on 5.3.2009 by Civil Judge (Junior Division), Dabwali but in the said suit, Sh. Amar Kumar filed an admission statement admitting that half of the property is owned and possessed by the plaintiff and the other half share belongs to him, therefore, Sh. Amar Kumar in the present suit cannot contend that the entire land on which the factory exists is owned and possessed by him exclusively. Another plea raised by the petitioner is that challenge to the judgment and decree dated 8.9.1990 passed in Civil Suit No. 1394 of 1990 titled “Amar Kumar vs. Pralahad Kumar” after lapse of 24 years is clearly barred by law of limitation, therefore, plaint is liable to be rejected by invoking clause (d) of Rule 11 of Order 7 CPC.

I have heard counsel for the petitioner, perused the paper book particularly the application for rejection of plaint, reply thereto and the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to recapitulate that an application for rejection of plaint is to be decided solely on the basis of averments made in the plaint and none else. The trial court has rightly taken note of this settled position

in law. So far as challenge to the judgment and decree dated 8.9.1990, the respondents/plaintiffs in para 5 of the plaint has averred that plaintiff No. 2 never appeared in the suit and never signed any plaint. In fact, this is all manipulation of defendant No. 1, Pralahad Kumar her husband and is the result of impersonation as in those days plaintiff No. 2 was not residing at Malout and he used to reside in Mumbai. It is further averred that the plaintiff reserved his right to file criminal proceedings in the competent Court of law. In view of these allegations coupled with the plea raised in para 7 with regard to knowledge of the impugned judgments and decrees, the trial court has rightly held that limitation is a mixed question of law and fact, requires evidence for its adjudication. Similarly, the affect of alleged admission made by Amar Kumar in civil suit filed by Ashok Kumar and Ashwani Kumar, if proved as per law, would be appreciated at the time of disposal of the suit on merits, thus, cannot constitute a ground to reject the plaint. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly

dismissed in limine.

(Rekha Mittal)
Judge

7.11.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No