

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

**Civil Revision No.4133 of 2016 (O&M)
Date of Decision: 23.12.2016**

Inder Mohan Jain

.....Petitioner

Vs

Manish Jain and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Arvind Kashyap, Advocate
for the petitioner.

Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull Advocate
for respondent No.1.

Ms. Sonia Sharma, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 13.05.2016 (Annexure P-1) passed by Civil Judge (Jr. Divn.) Chandigarh vide which application under Order 7 Rule 11 CPC filed by him was dismissed.

[2]. Brief facts are that the plaintiff filed a suit for declaration and permanent injunction, challenging the decree dated 14.06.1962 and Will dated 11.06.1973. Defendant No.1 filed an application under Order 7 Rule 11 CPC for rejection of the plaint

on the ground that the plaintiff sought share in the property raised from joint Hindu family from his father. Suit for partition of ancestral or joint Hindu family property was not maintainable during lifetime of the father. Secondly the suit was claimed to be barred by limitation and also suffered from delay and laches as the plaintiff had sought to challenge Will dated 11.06.1793, which was given effect in the year 2002. Defendant No.1 asserted that the Will could not be executed because at that time Kasturi Lal was not the owner.

[3]. At the time of issuing notice of motion on 04.08.2016 following, order was passed by this Court:-

“Learned counsel for the petitioner contends that the suit is not maintainable as there would be no cause of action available to the plaintiff in both eventualities on finding the suit land to be ancestral or non-ancestral. Learned counsel relies upon Raghubir Singh Vs. Dalip Singh and antoher, 2004 (2), RCR (Civil) 595.

Notice of motion for 01.09.2016.

Dasti as well.”

[4]. Learned Senior counsel for respondent No.1 by referring to RSA No.264 of 1986 titled “*Navtej Singh and another vs. Balkar Singh*” decided on 22.10.2013 contended that if the transfer takes place from the father and grandfather, then the suit is maintainable. The suit is not maintainable only in an eventuality, where there was no transfer from the father. In

the aforesaid case, validity of gift of joint Hindu family property and right of a grandson were involved.

[5]. Learned Senior counsel further contended that even if, the ancestral joint family property was not the same as that a coparcenary property, the restriction against the gift which existed for coparcenary property did not exist for ancestral property. Secondly, at the time, when the grandfather executed the Will, the father of the plaintiff was alive and if, he had not challenged, the plaintiff had no *locus standi* to challenge the same. Thirdly, the Hindu Succession Act, came into being in the year 1956. The right of plaintiff to claim a joint possession and challenge the action of the grandfather, no longer existed.

[6]. Learned Senior counsel again emphasized that passing of civil Court decree was also a gratuitous act. Gratuitous gift of joint family property is void and the normal rule that the donor cannot abrogate from his grant, will not apply to gift of joint family property. Exceptions are gifts of reasonable extent at the time of marriage of daughters or for charities. While interpreting the case law with reference to para 256 of Mulla Hindu Law, the Court adverted to the fact that a son cannot challenge alienation, when father is alive, who could gift the a valid discharge.

[7]. The question for consideration is whether the gift of joint family property could be interdicted at the instance of the grandson, when the father was alive. Alienation for consideration stands completely on a different footing to a gift of ancestral property. If the property had been sold by grandfather without necessity, it should have been possible to contend that grandfather was not competent to sue, if the father did not himself challenge the same, but as regards gifts of ancestral property, since the transaction is *void ab initio*, all that is necessary for the plaintiff is to ignore the said transaction and seek for a partition or to seek declaration that gift is *void ab initio*. The argument that son could not have challenged the gift made by the grandfather, when father was alive was not accepted.

[8]. Learned Senior further relied upon **Alka Gupta Vs. Narender Kumar Gupta, 2010(4) RCR (Civil) 731** and **Bhau Ram vs. Janak Singh and others, 2012(4) RCR (Civil) 571** and contended that the suit has to be decided after framing of issue and leading evidence. At the stage of Order 7 Rule 11 CPC, only averments in the plaint are to be seen.

[9]. The Will in question was implemented in the year 2002. As per Article 65 of the Evidence Act, the suit on the basis of

title can only be defeated by adverse possession, that too can be set up as a weapon of defence. No limitation is attracted for such a suit. Even otherwise, question of limitation is a mixed question of law and facts. At this stage, the Court will see only the averments made in the plaint.

[10]. The ratio laid down in **Rahubir Singh vs. Dalip Singh and another, 2004(2) RCR (Civil) 595** can only be applied where there is no transfer. In the instant case, there were transfers in the form of civil Court decree and Will dated 11.06.1974, which was implemented in the year 2002. The facts of **Raghubir Singh's** case (supra) are somewhat different and the ratio of the said judgment cannot be applied to the facts of the present case. At this juncture, nothing can be observed on merits of the case, lest it may prejudice anybody's case at the trial.

[11]. In view of facts and circumstances of the case, this Court is of the considered opinion that at the stage of Order 7 Rule 11 CPC, only averments in the plaint are to be seen. Cause of action is a bundle of facts and cannot be segregated at this stage to label the suit as without cause of action or barred by limitation.

[12]. In view of aforesaid, this Court does not find any error

of jurisdiction in the impugned order, nor the same can be held to have suffered with any perversity. This revision petition is accordingly dismissed.

December 23, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No