

Civil Revision No.4810 of 2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4810 of 2015
Date of Decision: May 31st, 2016

Bhim Sain Jain

...Petitioner

Versus

Usha Rani & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Samir Rathaur, Advocate,
for the petitioner.

Mr.Ashish Grover, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Petitioner-defendant No.3 is aggrieved of the dismissal of
the application filed under Order 7 Rule 11 CPC.

Mr.Samir Rathaur, learned counsel for petitioner-defendant
submits that Fateh Chand Jain-defendant No.1 has 6 sons and 5
daughters. The instant suit is at the behest of one of the daughters,
namely, Usha Rani claiming partition in the property owned by Fateh

Chand Jain in view of the amendment caused in Section 6 of the Hindu Succession Act, 1956 (for short “1956 Act”) as amended in the year 2005 by alleging that there is no embargo to the daughter to seek partition of the property in case the brothers do not intend partition of the property. He further submits that already an arbitration award dated 6.8.1999 amongst the sons and the father had been passed, which has been registered on 10.8.1999 and the property stood already partitioned. All the aforementioned acts were done prior to the amendment, i.e., 9.3.2005. For the purpose of rejection of the plaint, only averments in the plaint have to be seen. There is categoric averment in Para 4 of the plaint that the property at the hands of Fateh Chand Jain was ancestral as it had devolved upon him and his brother from his father, i.e., grand-father of the respondent-plaintiff. He further submits that the property already having devolved upon from the grand-father would not be ancestral as the respondent-plaintiff is a third generation in lineage. Even otherwise, the suit has not been filed within the period of limitation as there is no categoric averment qua acquiring of the knowledge of the award, aforementioned and, thus, urges this Court for setting-aside of the impugned order.

Mr.Ashish Grover, learned counsel for respondent No.1-

plaintiff submits that the objection of maintainability of the suit is a

mixed question of law and cannot be decided at this stage. At the best, the trial Court can be directed to frame the preliminary issue and on leading of the evidence, the Court can adjudicate upon the aforementioned objections. It is too premature at this stage. Even the father, who has been arrayed as defendant No.1, has not filed the written statement and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is merit in the submission of Mr.Rathaur. For the sake of brevity, Paras 4 and 13 of the plaint read thus:-

“4. That in the year 1970, the defendant No.1 and Pawan Kumar Jain, distributed the properties inherited by them from their father Shri Daulat Ram in an oral family settlement, which was got confirmed by them through Civil Court Decree dated 27.1.1970, passed in Civil Suit titled as Pawan Kumar Vs. Fateh Chand, by the Court of Shri A.S.Garg the then Sub Judge, Ist Class, Sirsa. As per this family settlement, the suit properties, fully detailed in the head-note of the plaint, fell to the share of defendant no.1. Copy of decree is attached herewith.

13. That cause of action for filing the present suit arose to the plaintiff firstly in the month of November, 2012, when plaintiff came to know of the impugned award and sale deed; the cause of action further arose on each and every subsequent denial of defendants; and it arose finally a week

back when defendants refused to admit the claim of plaintiff, which continues to arise.”

On conjoint reading of the aforementioned paragraphs, ex-facie, the plaintiff is a third generation in lineage and such generation cannot claim right by birth in the property, particularly after the amendment in Section 6 of 1956 Act. The award, on the basis of which the property has been partitioned amongst the males way back in the year 1999, has already been acted upon, i.e., prior to the amendment in Section 6 of the Act. It is settled law that it is the fourth generation, who would be having some interest to stake claim in the property being ancestral in nature. No documentary evidence has been produced on record to show the nature and character of the property.

For the purpose of adjudication of the application filed under Order 7 Rule 11 CPC, only the pleadings of the plaint have to be seen. The relevant portion of the aforementioned pleadings does not reveal the suit within the period of limitation, as Article 59 of the Limitation Act prescribes the limitation for setting-aside of the instrument within three years. Pleadings qua acquiring of the knowledge of the arbitration proceedings are conspicuously wanting.

In my view, it would be a farcical exercise in directing the trial Court to proceed with the trial as the application squarely falls

within the parameters of provisions of Order 7 Rule 11 CPC.

In my view, all these facts have not been noticed by the trial Court while dismissing the application.

Accordingly, application under Order 7 Rule 11 CPC is allowed. Resultantly, the suit is ordered to be rejected.

Revision petition stands allowed.

May 31st, 2016
ramesh

(AMIT RAWAL)
JUDGE