

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

CR No.5068 of 2016(O&M)

Date of decision:18.10.2016

Jagan Nath

....Petitioner

VERSUS

Murari Lal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Kul Bhushan Sharma, Advocate for the petitioner.

REKHA MITTAL, J.

CM No.18186-CII of 2016

Allowed as prayed for.

Annexures P-5 to P-11 are taken on record subject to just exceptions.

Disposed of accordingly.

CM No.21330-CII of 2016

Allowed as prayed for.

Annexure P-12 is taken on record subject to just exceptions.

Disposed of accordingly.

CR No.5068 of 2016

The present petition directs challenge against order dated 13.07.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Rewari whereby application filed by the petitioner under Order 7 Rule 11

of the Code of Civil Procedure, 1908 (in short 'CPC') for rejection of plaint on the ground of suit being barred by limitation has been dismissed.

Counsel for the petitioner would submit that Murari Lal – respondent No.1 (contesting respondent) has filed a suit for declaration and permanent injunction on the premise that land measuring 267 kanal 5 marlas situated in the revenue estate of village Bolni, Tehsil and District Rewari as per Jamabandi for the year 2003-04 is the joint Hindu family property in which the plaintiff has 22/735th share and the same is still joint amongst all the co-sharers and challenge has been laid to the sale deed in respect of land measuring 51 kanal 7 marla sold by the petitioner/defendant No.1 in favour of defendants No.2 to 5 by way of registered sale deed dated 29.10.2013. It is further argued that in para 2 of the plaint, there is reference to mutation No.508 stated to be wrongly sanctioned in favour of defendant No.1 on 01.07.1985 by the A.C. Ist Grade, Rewari as defendant No.1 had never been in cultivating possession of the suit land. Further para 3 of the plaint makes reference to Will executed in favour of the petitioner by Smt. Bhagwati Devi (since deceased). He has also pleaded about the petitioner having initiated partition proceedings in the revenue Court and pendency of the matter before the Financial Commissioner, Haryana at Chandigarh.

It is vehemently argued that as the respondent/plaintiff has sought to set aside the Will dated 13.07.1976 and mutation No.508 sanctioned on 01.07.1985, basis for seeking a declaration qua sale deed executed in the year 2013 and as the respondent was present at the time of sanction of mutation No.508 dated 01.07.1985, thus, he was well aware of the Will as well as the mutation, the present suit filed in the year 2013 is

clearly barred by limitation. It is further argued that the trial Court committed a gross error rather illegality by negating plea of the petitioner that suit is barred by law and thus the plaint is liable to be rejected.

I have heard counsel for the petitioner, perused the paper-book and the various annexures appended with the petition.

There cannot be any dispute about the settled position in law that an application for rejection of plaint is to be decided by the Court on the basis of averments made in the plaint and none else. No doubt, the plaint (Annexure P-4) makes reference to the Will, the mutation, the partition proceedings as pointed out by counsel for the petitioner but the respondent/plaintiff has neither challenged Will nor mutation dated 01.07.1985. It would be subject to examination by the trial Court if the respondent/plaintiff would be entitled to challenge the sale deed dated 29.10.2013 in absence of challenge to the Will and mutation No.508. I would hasten to add that in para 4 of the plaint, there is reference to decree dated 15.02.1999 passed by the Civil Judge (Junior Division), Rewari and it has been averred that judgment and decree dated 15.02.1999 is binding upon rights of defendant No.1 and in the light of said judgment and decree sale deed executed by defendant No.1 in favour of defendants No.2 to 5 is illegal, wrong, null and void and non-est in the eyes of law.

Counsel for the petitioner, in pursuance of the orders passed by this Court placed on record copy of the plaint of case No.1253/91 (Annexure P-12) Jagan Nath Sharma Vs. Murari Lal and others and copy of judgment dated 15.02.1999 in the aforesaid civil suit (Annexure P-7). A perusal of the plaint would make it evident that Jagan Nath Sharma – petitioner filed a suit for declaration and permanent injunction claiming

himself to be owner in possession of land measuring 274 kanal 5 marla to the extent of 10/294 share and 2/7 share situated in revenue estate of village Bolni vide mutation No.508 dated 01.07.1985 as per jamabandi for the year 1983-84. In the said suit, Murari Lal – respondent No.1/plaintiff was arrayed as defendant No.1. Indisputably, the said suit was dismissed by the trial Court under Order 17 Rule 3 CPC and there is nothing on record suggestive of the fact that judgment and decree passed by the trial Court dated 15.02.1999 was set aside in an appropriate proceedings.

Keeping in view the averments raised in the plaint, findings recorded by trial Court that question of limitation is a mix question of law and fact, thus, requires evidence for its adjudication do not warrant intervention.

To be fair to the petitioner, counsel has relied upon judgment of Hon'ble the Supreme Court of India **Raj Narain Sarin (dead) through LRs and others vs. Laxmi Devi and others**, 2003 (1) PLJ 474. Further reference has been made to judgments of this Court **Nawab Singh and others vs. Krishan Chand and others**, CR No.1730 of 2013 decided on **15.09.2014** and **Ravi Kumar @ Ravinder Kumar and others Vs. Charan Singh and another**, CR No.4257 of 2013, decided on **26.03.2015**. There cannot be any dispute about the settled position in law that if a suit, on the face of it, is clearly barred by limitation, the plaint can be rejected by invoking the provisions of Order 7 Rule 11 CPC. However, in view of discussion made hereinbefore, the petitioner cannot derive any advantage to his contentions from the referred authorities wherein the matter was decided keeping in view its peculiar facts and circumstances.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

OCTOBER 18, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no