

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.6889 of 2015
Date of Decision: May 17th, 2016

Brahman and Tirthodwar Sabha (Regd.), Kurukshetra

...Petitioner

Versus

Ashwani Kumar Walia & 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.Rajesh Arora, Advocate,
for the petitioner.

Mr.Amit Jaiswal, Advocate,
for respondent Nos.1 & 2.

AMIT RAWAL, J. (Oral)

Petitioner-defendant No.1 is aggrieved of the dismissal of the application filed under Order 7 Rule 11 CPC.

Mr.Rajesh Arora, learned counsel for petitioner-defendant No.1 submits that in the suit filed by respondent Nos.1 & 2-plaintiffs, following prayer, was made:-

“(i) Declaration to the effect that the plaintiffs are owners of the suit property in equal share.

(ii) Declaration to the effect that the sale deed No.3366 dated 30.10.2002 and the defendant No.2 is lessee of the suit property vide registered deed No.1773 dated 23.05.2014 are illegal, null and void and not binding on the rights of the plaintiffs.

(iii) Mandatory injunction directing the defendants No.7 & 8 to enter and sanction the mutation in favour of the plaintiffs of

the suit property in equal shares.

(iv) Permanent injunction restraining the defendants No.1 & 2 from interfering in the peaceful possession of the plaintiff over the suit property and also restrained from dispossessing the plaintiffs from the suit property illegally and forcibly, in any manner whatsoever.”

He further submits that at least the declaration qua the sale deed of 2002 is, *ex-facie*, barred by law of limitation. There is no challenge in the plaint qua aforementioned sale deed. In support of his contention, relies upon the judgment of the Hon'ble Supreme Court rendered in **Suresh Kumar Dagla Versus Sarwan and another**, 2015(1) R.C.R. (Civil) 161. Even the plaint does not disclose cause of action against defendant No.1 and, therefore, the suit is liable to be dismissed.

Mr.Amit Jaiswal, learned counsel for respondent Nos.1 and 2-plaintiffs submits that the ratio decidendi culled out in **Suresh Kumar Dagla's case (supra)** does not apply to the facts and circumstances of the present case as challenge to the sale deed was at the instance of the executant of the sale deed, whereas in the present suit, the cause of action arose to file the suit when petitioner-defendant No.1 leased out the property to defendant No.2 vide lease deed dated 23.5.2014 in respect of same plot which has been purchased by the plaintiffs vide sale deed dated 14.9.2006. The question of limitation in **Suresh Kumar Dagla's case (supra)** is a mixed question of law and the suit cannot be thrown summarily.

I have heard the learned counsel for the parties and appraised the paper book and of the view that for adjudication of the application under Order 7 Rule 11 CPC, the averments made in the plaint have to be seen and not the proposed defence. A conjoint reading of the plaint shows that the

cause of action accrued to the respondent-plaintiffs to file the suit in 2015 on account of the execution of the lease deed dated 23.5.2014. Both the parties are claiming ownership on the basis of the sale deeds, i.e., 2002 and 2006. It would be matter of evidence to see which party succeeds. The suit cannot be thrown in the manner and mode as has been adopted. The judgment, referred above, does not apply to the present case as the sale deed was challenged by filing the suit by executant of the sale deed after a gap of thirteen years.

For the foregoing reasons, no ground for interference in the impugned order is made out. The same cannot be said to have been passed without jurisdiction.

petition stands dismissed.

However, petitioner-defendant No.1 shall be at liberty to take all legal objections available under law, but not for dismissal of the suit as has been noticed above.

May 17th, 2016
ramesh

(AMIT RAWAL)
JUDGE