

CR No.8227 of 2016

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

CR No.8227 of 2016

Date of decision:07.12.2016

Rakesh

... Petitioner

Vs.

Smt. Savitri Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pradeep Virk, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner-defendant is aggrieved of the impugned order dated 06.10.2016, whereby, an application moved under Order 7 Rule 11 CPC for rejection of the plaint on the ground of limitation and payment of court fees, has been dismissed.

Mr. Pradeep Virk, learned counsel for the petitioner-defendant submits that suit for declaration and permanent injunction by challenging the sale deed dated 17.08.2004 and mutation dated 07.09.2004 has been filed in the year 2012. The factum of sale deed No.3428 dated 17.08.2004 was in the knowledge of the plaintiff/respondent No.1 in the year 2007, thus, filing of the suit was barred by law of limitation. Even the court fees has not been paid.

I have heard learned counsel for the petitioner-defendant and appraised the paper book.

Before I could form an opinion on the merits of the matter, I called upon Mr. Virk to apprise the Court regarding the status of the suit

and answer was that the suit is at the evidence stage. He was also called upon to apprise this Court as to whether the issues regarding limitation and court fees have been framed or not, the answer is that “not aware”.

The fact remains that the question of limitation and court fees even in the absence of framing of issues being mixed question of fact and law, can always be raised at any point of time. The petitioner-defendant is at liberty to lead evidence in this regard and also cross-examine the plaintiffs but not in the manner and mode as indicated above.

The contention of Mr. Virk that the respondent-plaintiffs had knowledge of sale deed in the year 2007 is a question of evidence and cannot be looked into for adjudication of the application filed under Order 7 Rule 11 CPC as the averments made in the plaint have to be seen.

In view of the aforementioned observations, I do not find any illegality and perversity in the impugned order, much less the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

December 07, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No