

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 128

Civil Revision No.1013 of 2017 (O & M)
Date of Decision: February 13, 2017

Santosh Rani & another

..... PETITIONERS

VERSUS

Sarwan Kaur

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. M.S. Khillan, Advocate, for the petitioners.

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Jaspal Singh, J

1. By virtue of the instant petition preferred under Article 227 of the Constitution of India, petitioners have sought setting aside of Order dated December 05, 2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Karnal, in Civil Suit No.19/15 dated July 25, 2012, whereby an application moved under Order VII Rule 11 CPC for rejection of the plaint, by petitioners – defendants has been dismissed.

2. While assailing the impugned order, it has been contended by learned counsel for the petitioners that the same is absolutely against the letter and spirit of provisions contained under Order VII Rule 11 CPC. The trial court has failed to appreciate that suit was filed by respondent – plaintiff on July 25, 2012 whereby she has submitted that validity of two sale deeds bearing No.2235/1 dated February 10, 1998 and No.6230/1 dated December

01, 2000, on the basis of fraud i.e. after the expiry of a period more than a decade of the execution thereof. Such a suit can only be filed within a period of three years from the date of execution of the sale deed as provided under Section 58 of the Limitation Act, 1963 (for short, 'Act'). As such, on the face of it, the suit is barred by limitation. But, these facts have been ignored and discarded by the learned trial court while passing the impugned order.

3. Learned counsel for the petitioners has further contended that even the lower court has failed to assign any cogent reason for dismissing the application. Such a matter came up for hearing before this Court in case **Gajjan Singh vs. Virsa Singh & others, 2007(3) RCR (Civil) 3**, in which, it has been observed that a registered document is a public document and especially when the same has been acted upon against the affected party, the same is deemed to be in his knowledge. Further that the limitation to challenge such a document starts from the date of its registration. Moreover, in the case in hand, ground of fraud and misrepresentation is also not supported by any action taken by the respondent – plaintiff. No complaint was moved at any point of time to any police authority or any other authority after execution of the sale deeds in question. Thus, the impugned order is not sustainable in the eyes of law and deserves to be set aside. Consequently, the plaint is liable to be rejected.

4. This Court has given an anxious thought to aforesaid submissions made by learned counsel for the petitioners but find the same to be of no legal and factual weight.

5. By now, it is pretty settled that while deciding an application under Order VII Rule 11 CPC, only the statement in the plaint is to be taken into consideration and not the averments raised in defence or in the

has been challenged on the ground of fraud and misrepresentation, alleging that executant of the sale deeds is aged about 80 years who is otherwise a simpleton lady. She was also not enjoying a good health and as per Para 20 of the plaint, after making an arrangement of the mortgage money, she approached the petitioners – defendants to redeem the property on receipt of mortgage money but a month prior to filing of the suit, she came to know that instead of mortgage deed, the defendants have got executed the sale deeds. Thus, in the case in hand, question of limitation can be termed to be an inextricably mixed the question of law and facts, and the limitation bar cannot be decided without considering the related facts giving rise to such question.

6. In the light of what has been discussed above, this Court does not find any infirmity or illegality in the impugned order. As such, the petition is dismissed.

February 13, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No