

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 113

Civil Revision No.1144 of 2017 (O & M)
Date of Decision: February 21, 2017

Hans Raj & others

..... PETITIONERS

VERSUS

Dayawati & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

PRESENT: - Mr. Jai Vir Yadav, Advocate, for the petitioners.

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Jaspal Singh, J

1. Through the instant revision petition preferred under Article 227 of the Constitution of India, petitioners – defendant Nos.1 to 4 have sought setting aside of order dated September 08, 2016 (Annexure P-5) passed by the Civil Judge (Junior Division), Faridabad, whereby an application moved by the petitioner – defendant Nos.1 to 4 under Order VII Rule 11 CPC has been dismissed.

2. While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioners that the same is absolutely against the provisions contained in Order VII Rule 11 CPC as well as settled canons of law. The learned trial court, while passing the impugned order, has not taken into consideration the provisions contained under Order VII Rule 11 CPC which has resulted into grave injustice to petitioner – defendant

Nos.1 to 4. It has further been submitted by learned counsel that Yad Ram son of Kale Ram was the original owner in possession of the property in suit who executed a Will dated October 09, 2003 in his sound and disposing mind, in favour of petitioners – defendant Nos.1 to 4. He breathed his last on January 08, 2004. Petitioners inherited the property on the basis of aforesaid Will. Yad Ram died issueless and unmarried. His sisters Chanda @ Chanderwati and Ganesho died on January 25, 2010 and October 16, 2010, respectively, while his brother Moonga @ Gopal died on April 25, 2013. Thus, respondent No.1 – plaintiff is not the legal heir of deceased Yad Ram. As such, he has got no locus standi to file the suit. No cause of action has also arisen to him to file the suit. Otherwise also, respondent – plaintiff got the knowledge of Will dated October 09, 2003, in the month of January 2014 when she came to village Bhainsrawali, Tehsil & District Faridabad, to attend the last rites of Yad Ram. Not only this, the suit is also barred by limitation as the suit for declaration can only be filed within a period of three years from the date of accrual of cause of action.

3. 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.

4. Since the rejection of plaint has been sought under Order VII Rule 11 CPC, it would be appropriate to reproduce the same:-

“Rejection of Plaint: The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being

required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate.

(f) where the plaintiff fails to comply with the provision of Rule 9.”

5. Before proceeding to decide the matter in controversy, it would be desirable to mention here that while deciding the application under Order VII Rule 11 CPC, only the statement in the plaint is to be taken into consideration and not the defence put-forth by the defendant(s). As far as the cause of action is concerned, respondent – plaintiff in Para No.11 of the plaint has categorically stated with regard to the accrual of cause of action in her favour. Similarly, as far as the ground of limitation is concerned, a perusal of the plaint discloses that cause of action accrued on September 15, 2010 when the respondent – plaintiff visited the office of Halqa Patwari for procuring the copy of jamabandi of the land in question and at that time, she is stated to have got the knowledge about the execution of Will dated October 09, 2003 by Yad Ram. Similarly, as far as locus-standi of respondent – plaintiff is concerned, that is a mixed question of law and fact, and at this stage only the averments made in the plaint are to be taken into consideration. Thus, this Court is of the considered view that the impugned order is perfectly legal and valid, and as such, it does not call for any interference by this Court.

6. Dismissed.

February 21, 2017
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(Jaspal Singh)
Judge