

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

**CR No.2103 of 2012(O&M)
Date of Decision-04.10.2017**

Alep Parkash Singh and others ... Petitioners

Versus

Atamjit Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kamal Sehgal, Advocate
for the petitioners.

Mr. Mayank Mathur, Advocate
for all LR's of respondent No.1.

RAJ MOHAN SINGH, J.

CM No.19228-CII of 2016

Prayer in this application is for impleading legal representatives of respondent No.1/Atamjit Singh.

For the reasons mentioned in the application, the same is allowed. Legal representatives as mentioned in para No.2 of the application are ordered to be brought on record subject to all just exceptions.

Amended memo of parties is taken on record.

Main case

[1]. Petitioners have assailed the order dated 10.12.2011 passed by the Additional Civil Judge (Sr. Division), Jalandhar vide which application under Order 7 Rule 11 CPC filed by the petitioners for rejection of the plaint was dismissed.

[2]. Brief facts of the case are that Gurbax Singh was the original owner of the land measuring 534 Kanals 10 marlas situated in village Aur Tehsil and District Nawanshahr. He was also owner of land measuring 98 kanals 12 marlas situated in village Dakoha District Jalandhar. Aforesaid Gurbax Singh sold the land of village Aur to Lt. Col. Gurbachan Singh Atwal and Dalip Singh vide sale deed dated 14.06.1958. The land situated in village Dakoha was sold by Gurbax Singh to Surjit Kaur Atwal wife of Lt. Col. Gurbachan Singh Atwal vide registered sale deed dated 19.06.1958. In this way, Gurbax Singh sold his land in both the villages in favour of Lt. Col. Gurbachan Singh Atwal, Dalip Singh and Surjit Kaur Atwal (wife of Lt. Col. Gurbachan Singh Atwal). Gurbax Singh died on 10.04.1969. Harbans Kaur was the sister of Gurbax Singh. She filed a civil suit for declaration in respect of land situated in village Aur, challenging the sale in favour of Lt. Col. Gurbachan Singh Atwal and Dalip Singh. The sale deed was claimed to be vexatious.

[3]. The suit was dismissed vide judgment and decree dated 24.01.1979 on the ground that plaintiff/Harbans Kaur had no *local standi* to file the suit. The aforesaid judgment and decree dated 24.01.1979 was upheld in appeal before the Lower Appellate Court vide judgment and decree dated 31.10.1979 and also in Regular Second Appeal No.964 of 1980 which was dismissed on 18.11.1993. The judgment and decree dated 24.01.1979 had already attained finality.

[4]. In respect of land situated in village Dakoha District Jalandhar, Atamjit Singh son of Harbans Kaur filed a suit for declaration, claiming himself to be owner of land measuring 98 kanals 12 marals and the sale deed dated 19.06.1958 executed by Gurbax Singh in favour of Surjit Kaur Atwal was claimed to be *sham* transaction.

[5]. The said suit was dismissed by the trial Court vide judgment and decree dated 10.09.1981. The said judgment and decree was upheld in appeal before the Lower Appellate Court vide judgment and decree dated 17.01.1984 and was also upheld in Regular Second Appeal No.1179 of 1984 vide order dated 18.02.2010.

[6]. In the aforesaid manner, the properties situated in both the villages were purchased by Lt. Col. Gurbachan Singh Atwal, Dalip Singh, Surjit Kaur Atwal (wife of Lt. Col. Gurbachan Singh Atwal) and the sale deeds were upheld in the litigations upto the High Court.

[7]. Gurbachan Singh Atwal died on 16.06.1980. The land situated in village Aur Tehsil and District Nawanshahr was transferred to Surjit Kaur being widow of Gurbachan Singh Atwal. After the death of Gurbachan Singh Atwal, Surjit Kaur Atwal became owner of the land situated in village Aur. Surjit Kaur Atwal executed a registered Will in favour of her sister Raminder Kaur. Surjit Kaur Atwal died on 10.04.1996. Said Raminder Kaur filed a civil suit for

declaration on the basis of aforesaid registered Will in her favour on 16.12.1999. The suit was decreed on 12.06.2006 in favour of Raminder Kaur.

[8]. Thereafter, plaintiff/Atamjit Singh filed a civil suit for declaration against Raminder Kaur and others to the effect that he is owner in possession of the land situated in villages Dakoha and Aur and the judgment and decree dated 12.06.2006 passed by Civil Judge (Senior Division), Jalandhar was illegal, null and void. Permanent injunction was also sought seeking to restrain the defendants from interfering in the possession of the plaintiff and also against implementation of judgment and decree dated 12.06.2006 passed by the trial Court. The aforesaid suit was filed on 01.08.2007.

[9]. Learned counsel for the petitioners submitted that in the suit itself all the incriminating facts have been pleaded by the plaintiff. Plaintiff pleaded himself to be son of Harbans Kaur and Major General Atma Singh. Plaintiff pleaded that Gurbax Singh died on 10.04.1969 and he left behind House No.528, Model Town, Jalandhar and land in villages Dakoha and Aur, besides some deposits in the Bank. A petition under Section 276 of Indian Succession Act for grant of letters of administration in respect of two Wills dated 14.04.1964 registered on 16.04.1964 and 20.05.1994 registered on 21.05.1964 was filed by Harbans Kaur and plaintiff Atamjit Singh respectively. Harbans Kaur was married to Major

General Atma Singh who deserted her after the birth of the plaintiff. Thereafter, Harbans Kaur stayed with Gurbax Singh and Gurbax Singh executed the Wills of his properties in favour of Harbans Kaur and the plaintiff. On the basis of said title, Harbans Kaur filed the suit as mentioned in the earlier part of the order.

[10]. In the suit filed by Atamjit Singh, an application under Order 7 Rule 11 CPC for rejection of plaint was filed on 18.05.2011 after the decision of Regular Second Appeal No.1179 of 1984 on 18.02.2010. Defendants/petitioners took the grounds of *res judicata*, constructive *res judicata*, limitation and affixation of proper Court fee. The application was rejected by the Additional Civil Judge (Senior Division), Jalandhar vide order dated 10.12.2011.

[11]. I have heard learned counsel for the parties.

[12]. Learned counsel for the petitioners by referring to **State Bank of India Vs. Gracure Pharmaceuticals Ltd., 2014(1) RCR (Civil) 88** and **Deva Ram and another Vs. Ishwar Chand and another, AIR 1996 SC 378** contended that the issue of rejection of plaint in terms of Order 7 Rule 11 CPC can be raised at any stage of litigation. Learned counsel also relied upon **Raj Narain Sarin (dead) through LRs and others Vs. Laxmi Devi and others, 2002 (10) SCC 501, T. Arivan Dandam Vs. T.V.Satyapal and another, AIR 1977 SC 2421** and contended that the suit was filed after more than 40 years, therefore, it was barred by limitation and such frivolous and vexatious litigation cannot be allowed to proceed.

[13]. There cannot be any dispute with regard to the propositions as held by Hon'ble Apex Court. In the instant case, the provision in terms of Order 7 Rule 11 CPC has been resorted to on the grounds of *res judicata*, constructive *res judicata*, limitation and Court fee. The suit was filed on 01.08.2007. The present application came to be filed on 18.05.2011.

[14]. During course of arguments, it has been transpired that after framing of proper issues, both the parties have already concluded their evidence and the case is fixed for arguments before the trial Court. All the necessary issues have already been framed by the trial Court and thereafter, both the parties have led evidence under the aforesaid issues. The witnesses produced by both the parties have also been cross examined by learned counsel for the opposite parties. Even Civil Revision No.2774 of 2014 was filed by the petitioners, challenging the order dated 25.02.2014 passed by the Civil Judge (Junior Division), Jalandhar, whereby application under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement was dismissed by this Court. This Court while allowing the aforesaid civil revision on 08.01.2016, noticed all the facts arising in the litigation. Thereafter, after necessary amendment, the case was matured for arguments before the trial Court. For the issues of *res judicata*, constructive *res judicata* and limitation, necessary issues have also been framed by the trial Court and both the parties have led their evidence. The aforesaid issues

would be answered on the basis of proof of execution and previous litigation on record. The issue of limitation is also mixed question of law and facts.

[15]. Since the parties have already concluded their respective evidence before the trial Court, therefore, at this stage of the case, particularly having acquiesced the jurisdiction of the trial Court in allowing the Court to proceed with the trial, the petitioner cannot be allowed to avail provision of Order 7 Rule 11 CPC on the ground that both the parties have already led their evidence. At this stage when the case is already fixed for arguments before the trial Court, the acceptance of the application under Order 7 Rule 11 CPC would negate the decision of *lis* on the basis of evidence on merits. Though there is no dispute regarding proposition involved viz-a-viz the scope of Order 7 Rule 11 CPC, but in my considered opinion, such an indulgence cannot be granted in favour of the petitioners at this stage, particularly when both the parties have concluded their evidence. The case is already fixed for arguments before the trial Court. Parties have already led evidence in respect of pleadings of previous cases as well as on the plea of limitation. Petitioners have already acquiesced jurisdiction of the Court in leading evidence and challenging the orders passed by the trial Court on different stages.

[16]. The order dated 25.02.2014 passed by the trial Court was assailed by the petitioners by way of Civil Revision No.2774 of 2014 which was allowed on 08.01.2016 allowing the petitioners to

amend their written statement. Having done so, the petitioners cannot be allowed to say that now irrespective of the stage of the litigation, the application under Order 7 Rule 11 CPC be decided by ignoring the evidence led by the parties on record. Moreover, the case is fixed for final arguments before the trial Court.

[17]. In view of attending facts and circumstances of the case, I do not feel it appropriate to grant indulgence in favour of the petitioners. Even otherwise, the issues of *res judicata*, constructive *res judicata* and limitation would be decided on the basis of evidence on record. The issue of Court fee can also be appropriately met by the trial Court by passing any contingent/conditional decree, if any arises.

[18]. In view of above, this revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

[19]. Nothing expressed hereinabove, shall be construed to be an expression of opinion of any relevant fact while deciding the suit on merits.

(RAJ MOHAN SINGH)
JUDGE

04.10.2017
Prince

Whether reasoned/speaking	Yes/No
Whether Reportable	Yes/No