

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 2856 of 2015

Date of Decision: 20.11.2017

Baljit Singh

.....Petitioner

Versus

Raj Kumari and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. Sandeep Kumar Sharma, Advocate
for respondent No. 1.

ANITA CHAUDHRY, J

This revision is directed against the order dated 13.2.2015 (Annexure P-9) vide which the application filed by the petitioner under Order 7 Rule 11 CPC has been dismissed.

It is necessary to notice the facts first. Raj Kumari, sister of the petitioner filed a suit challenging the decree suffered by Jai Dev, their father, in favour of her brothers and the mutation sanctioned thereupon. The plea taken by the sister was that all the legal heirs were not impleaded as party and there could be no settlement. It was also pleaded that Jai Dev had never consented to any decree nor he attended the Court or engaged any lawyer. It was also mentioned that earlier she had filed a suit which was dismissed in default in 2002 but later it was restored and they were permitted to file the suit afresh vide order dated 4.2.2011. It was pleaded that the suit was based on succession and title was being claimed. It was pleaded that the suit property was ancestral and the plaintiff prayed for

declaration that she had 1/6th share in the land.

The defendants filed an application seeking rejection of the plaint on the plea that the plaintiff had not come to the Court with clean hands and the earlier suit No. 34 of 2002 had been decided between the parties on 13.1.2006 and the civil appeal had also been decided. Reference to the suit filed in 1995 and 2000 was also mentioned. It was pleaded that the plaintiff had no cause of action and the plaint was liable to be rejected.

The plaintiff filed reply to the application pleading that the present suit was on a different cause of action and the other suit related to a different cause and the RSA was pending before the High Court.

The trial Court passed the following order:-

“Arguments heard on the application u/o 7, Rule 11, CPC, wherein the counsel for the applicant/defendant argued that the plaintiff has not disclosed any cause of action and further an earlier suit regarding same facts has been decided between the parties. In the end a prayer for rejection of plaint has been made. On the other hand ld. Counsel for the plaintiff opposed the present application. After hearing the rival contentions and gone through the case file it transpires that while deciding the application under Order 7 Rule 11 the averments made in the plaint has to be seen. The defence set by the defendants can not be looked into. The plaintiff has mentioned the cause of action in averments made in the plaint, further, whether the earlier suit was pressed for resjudicata is a matter of evidence. Hence, no ground is made out allow the application under Order 7 Rule 11. Hence, the same is, hereby, dismissed. Now, to come up on 13.3.2015 for filing written statement by the defendant. It shall be the last opportunity.”

The submission on behalf of the petitioner is that originally the suit was filed in the year 2000 which was dismissed in default and later on they had filed the application seeking restoration and were permitted to

withdraw the suit and opportunity was granted to file a fresh suit. It was

urged that on the face of it the suit was barred by limitation as the plaintiff was challenging the decree passed in 1994 and the cause of action could not have been accrued in 2011 and apparently it is barred by limitation. It was urged that the plaintiff had not explained how the cause of action arose to her. It was urged that the question would also be whether filing of the second suit with liberty would give her fresh limitation. It was urged that the Apex Court in ***Bakhtawar Singh versus Sada Kaur 1997(1) RCR (Civil) 51*** had held that mere permission to withdraw the suit and file afresh on the same cause of action will not extend the benefit of Limitation Act. It was urged that the power to reject the plaint can be exercised at any stage of the suit and they have filed the application at the first available moment. It was urged that the plaint does not disclose necessary averments relating to limitation and the plaint was liable to be rejected. Reliance was placed upon ***Ram Prakash Gupta versus Rajiv Kumar Gupta and others 2007(4) R.C.R. (Civil) 605***.

On the other hand, the submission is that the limitation is a mixed question of law and fact and evidence will have to be led and the Court can decide the issue after evidence is led and for the purposes of deciding the application under Order 7 Rule 11 CPC, only the plaint has to be seen. It was urged that the suit based on title can be filed from the date of knowledge and the plaintiff will lead evidence to show when she had knowledge and all the necessary facts have been pleaded.

The contention of the petitioner that the plaintiff had earlier withdrawn her suit with permission to file a fresh suit on the same cause of action would not extend limitation under Section 14 of the Limitation Act.

application filed under Order 7 Rule 11 CPC. The defendants were yet to file the written statement and they can raise all the pleas in their written statement. The question of limitation is a mixed question of law and fact and it is not clear whether the petitioner had filed any documents along with his reply. Also the question whether the limitation stood extended under Section 14 of the Limitation Act again is a question to be addressed by the trial Court and not in the application filed under Order 7 Rule 11 CPC. The plaint discloses a cause of action. I find no infirmity in the order. The trial Court at the appropriate state would address all the objections. There is no merit in the petition.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

November 20, 2017

Gurpreet/Sunil

Whether speaking/reasoned	:	Yes
Whether reportable	:	No