

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

CR No.276 of 2017 (O&M)

Date of decision: 18.01.2017

Kulwant Kaur Sidhu

..Petitioner

Versus

Mohinder Partap Singh Dhillon

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Ms. Meena Bansal, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for quashing of impugned order dated 08.12.2016 (Annexure P-4) passed by Civil Judge (Senior Division), Ferozepur, whereby, the application under Order 7 Rule 11 CPC filed by the petitioner-defendant has been dismissed.

Briefly, the facts of the case as made out in the present revision petition are that the respondent-plaintiff filed a civil suit for decree of possession. During pendency of the suit, an application under Order 7 Rule 11 CPC for rejection of plaint was filed by the petitioner-defendant and the same has been dismissed vide order dated 08.12.2016, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the suit filed by the respondent-plaintiff is liable to be dismissed for misjoinder or non-joinder of the parties. While passing the impugned order, the Court below

has not appreciated the fact that the property in dispute was purchased by the petitioner-defendant for an amount of ₹12 lacs from Seema Narula and Sudesh Narula. An amount of ₹6 lacs was paid to Seema Narula and the remaining amount of ₹6 lacs was paid to Sudesh Narula through cheques. Learned counsel further submits that the value of the suit property for the purpose of Court fee had wrongly been assessed and as such, the proper Court fee has not been affixed on the plaint and the suit was liable to be rejected only on this ground. The respondent-plaintiff had submitted that the portion of the property in dispute was in occupation of the petitioner-defendant and plaintiff had claimed the damages on account of use and occupation @ ₹10,000/- per month and for a period of 3 years, which comes to ₹3,60,000/-. In the plaint, it has been mentioned that the disputed portion was demanded by the petitioner-defendant in the year 2005 and the suit was filed in the year 2016. There was gap of 11 years and damages on account of use and occupation @ ₹10,000/- comes to more than ₹13,20,000/-. Learned counsel also submits that the suit was barred by law as the petitioner-defendant is not tenant or licensee of the disputed property as the property in dispute was purchased vide agreement dated 15.03.2013.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order dated 08.12.2016 (Annexure P-4).

Admittedly, the respondent-plaintiff filed a suit for decree of possession of the property in dispute. During pendency of the appeal, the petitioner-defendant filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that proper parties were not impleaded in the suit and proper Court fee was not affixed. The respondent-plaintiff

was having no cause of action to file the suit. It is also the ground in the application that the property in dispute was purchased for an amount of ₹12 lacs and the amount was paid by way of cheque. The respondent-plaintiff had claimed the damages on account of use and occupation @ ₹10,000/- per month and for a period of 3 years, it comes to ₹3,60,000/-. In the plaint, it has been mentioned that the disputed portion was demanded by the petitioner-defendant in the year 2005 and the suit was filed in the year 2016. There was gap of 11 years and damages on account of use and occupation @ ₹10,000/- comes to more than ₹13,20,000/- but still required Court fee was not affixed on the plaint.

The application was contested by the respondent-plaintiff and reply to the application was also filed. An objection was raised by the respondent-plaintiff that the agreement dated 13.02.2009 was not title deed and it was simply an agreement propounded by the petitioner-defendant. The agreement dated 15.03.2013 produced by the petitioner-defendant in support of his contention was of no consequence as no sale deed was produced by him. It was also mentioned in the reply that the agreement till it is in force has no value in the eyes of law.

The application moved by the petitioner was dismissed on the ground that the suit cannot be dismissed by giving a finding that the same was not within limitation. The respondent-plaintiff had affixed Court fee of ₹14,630/- as per the value of the portion in occupation of petitioner-defendant. It is also mentioned that it cannot be held at this stage that the value of the property is more than ₹1,00,000/-. The question of limitation and Court fee can be given effect on the basis of evidence adduced by the

parties and the suit cannot be dismissed only on this ground.

It has been held in various judgments that the suit cannot be dismissed being barred by limitation without proper pleadings, framing of issue on limitation and by taking evidence as question of limitation is a mixed question of fact and law and on ex-facie reading of the plaint, it cannot be held at this stage that the suit is barred by time.

Hon'ble the Apex Court in ***P.V. Guru Raj Reddy Rep. By GPA Laxmi Narayan Reddy and another vs. P. Neeradha Reddy and others etc., 2015(2) RCR (Civil) 43*** has held as under: -

“ Rejection of the plaint under Order 7, Rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7, Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7, Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be

rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.”

Same view was taken by Hon'ble the Apex Court in ***Saleem Bhai & ors. vs. State of Maharashtra and others, 2003(1) RCR (Civil) 464***, which is reproduced as under: -

“ A perusal of Order 7 Rule 11 Civil Procedure Court makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 Civil Procedure Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 Civil Procedure Code cannot be procedural irregularity touching the exercise of jurisdiction by the trial court.....”

As per case of the respondent-plaintiff, the petitioner-defendant came into possession of the suit property in the year 2005 whereas the suit

was filed in the year 2016 and it cannot be dismissed at this stage by giving finding that the suit was not filed within limitation. The value of the suit property cannot be assessed at this stage. The issue of limitation and Court fee can be considered on the basis of evidence adduced by the parties and as such, no interference is required to reject the plaint at this stage.

Accordingly, there is no force in the arguments raised by learned counsel for the petitioner and the revision petition being devoid of any merit is dismissed.

18.01.2017
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(DAYA CHAUDHARY)
JUDGE

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