

Civil Revision No.2830 of 2017 (O&M)

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

Sr. No.125

**Civil Revision No.2830 of 2017 (O&M)
DECIDED ON: April 25, 2017**

SAMINA AND ANOTHER

..PETITIONERS

VERSUS

MOHD. ASHRAF KHAN AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sharad Aggarwal, Advocate,
for the petitioners.

JASPAL SINGH, J.

CM No.8717-CII of 2017

Application is allowed as prayed for.

CR No.2830 of 2017

Through the instant revision petition preferred under Article 227 of the Constitution of India, petitioners-defendants No.3 & 4 have sought the setting aside of impugned order dated October 19, 2016 (Annexure P-4) passed by the learned Civil Judge (Jr. Divn.), Mewat

whereby an application moved by them under Order VII Rule 11 CPC has been dismissed.

2. Assailing the impugned order, it has been contended by learned counsel for the petitioners that the trial court has failed to exercise the jurisdiction vested in it while passing the impugned order. A bare perusal of the plaint makes it crystal clear that it is nowhere mentioned by the plaintiff as to when and how he gained knowledge of the sale deeds in question. Rather it is to be presumed that sale deed(s) on its registration becomes a matter of public knowledge. Therefore, suit of the plaintiff being filed beyond a period of three years of registration of the sale deed is clearly barred by limitation. Similarly, learned trial court has also failed to appreciate that at the time of execution and registration of the sale deeds bearing Vasika No.2988 dated May 23, 2005 and 2756 dated October 03, 2005, petitioners have paid an amount of ₹ 17,00,625/- as sale consideration. So, from the face of it, firstly, suit is hopelessly time barred and secondly, respondent No.1 has challenged the sale deeds, the sale consideration of which is ₹ 17,00,625/-. Thus, he is liable to pay the ad-valorem court fee. Since, impugned order is absolutely against the documents and settled canons of law especially, the provisions contained in Order VII Rule 11 CPC, therefore, the same is liable to be set aside. Consequently, application deserves to be allowed and plaint rejected.

3. This court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioners and have perused the records as well as impugned order, but finds the various contentions putforth by learned counsel for the petitioners without any legal weight.

4. The plaintiff is neither a party to either of sale deeds under challenge nor he has sought the relief of possession. Merely, the petitioners/defendants No.3 & 4 who are the purchasers have paid a sale consideration of ₹17,00,625/- at the time of the execution and registration of the sale deed does not ipso facto mean that the plaintiff is liable to pay the court fee. As far as the question of limitation is concerned; firstly, it is a mixed question of law and facts and cannot be decided in the absence of the evidence to be led by the parties and secondly, it is well settled proposition of law that the plaint cannot be rejected on the basis of the allegations raised by the defendants in their written statement or in any application for rejection of plaint. The court has to read the plaint as a whole to find out whether there is any ground for its rejection exercising the powers under Order VII Rule 11 CPC. It is the plaint alone, which has to be taken into consideration at the time of disposal of an application under Order VII Rule 11 CPC. This observation stands fortified from the judgment captioned as “*Abdul Gafur Vs. State of Uttarakhand, (2008) 10 Supreme Court Cases 97*” as well as “*Sajjan Sikaria vs. Shakuntala Devi Mishra, (2005) 13 Supreme Court Cases 687*”.

5. As per the contents contained in para No.5 of the plaint, cause of action arose to respondent No.1/plaintiff a week ago from the filing of the suit. Moreover, it has to be decided on merit as mentioned in the foregoing discussion. Thus, this court is of the considered view that impugned order dated October 19, 2016 is absolutely in consonance with the legal proposition as well as facts of the case. As such, it does not call for any interference by this Court.

7. In the light of what has been discussed above, this Court does not find any merit in the instant petition, the same is dismissed.
8. No order as to costs.

April 25, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No