

CR No. 3253 of 2017 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No. 3253 of 2017 (O&M)

Date of decision: 31.7.2017

Nazar Singh

...Petitioner

Versus

Rur Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. J.K. Khetarpal Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 3.3.2017 (Annexure P-6) passed by the learned trial court, whereby his application under Order VII Rule 11 of the Code of Civil Procedure was dismissed and plea for rejection of plaint for want of cause of action as well as suit being time barred was declined, defendant No.2-petitioner has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioner.

It is the argued case on behalf of the petitioner-defendant that suit filed by the plaintiffs for declaration claiming ownership on the basis of Will does not disclose any cause of action. However, perusal of the Will (Annexure P-2), would not support the plea raised on behalf of the petitioner, at this stage. Similarly, another plea raised on behalf of the petitioner that suit of the plaintiffs was time barred has been found wholly

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misplaced, for the reason that it is mixed question of law and facts. Appropriate issues are yet to be framed by the learned trial court. A bare perusal of the impugned order would show that learned court below was well within its jurisdiction to pass the impugned order, because reading of plaint does disclose the cause of action and the impugned order deserves to be upheld.

So far as judgments of the Hon'ble Supreme 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** and **Surjit Kaur Gill and another Vs. Adarsh Kaur Gill and another, 2015 (3) SCC (civil) 458**, relied upon by learned counsel for the petitioner, are concerned, there is no dispute about the law laid down and observations made therein. However, on a close perusal of the cited judgments, none has been found to be of any help to the petitioner, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

Difference between dismissal of the suit and rejection of plaint has to be understood in clear terms. Rejection of the plaint cannot be equated with dismissal of the suit under any circumstances. It goes without

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saying that onus would always be on the plaintiff to discharge his initial onus. In case plaintiff is unable to prove his pleaded case, by leading cogent and convincing evidence, his suit may be dismissed. However, so far as the case in hand is concerned, perusal of the plaint as well as the Will, on the basis of which the plaintiffs have set up their case, would disclose cause of action and the application moved by the defendant, seeking rejection of plaint, was rightly dismissed by the learned trial court. Having said that, this Court feels no hesitation to conclude that the learned court below committed no error of law, while passing the impugned order and the same deserves to be upheld.

Similarly, in the totality of facts and circumstances of the case, it cannot be said that suit of the plaintiffs was time barred. Emphasis laid by learned counsel for the petitioner on Article 58 of the Limitation Act, has been duly considered but found misplaced, for the reason that the same has not been attracted against the plaintiffs in view of the peculiar fact situation obtaining on record in the case in hand. In this view of the matter, no fault can be found with the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order has been found duly supported by sound reasons and the same deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

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noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

31.7.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No