

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 370 of 2016

DATE OF DECISION: 19.5.2017

Rajbala

.....Petitioner

Versus

Ram Dei and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sudhir Aggarwal, Advocate
for the petitioner.

None for the respondents inspite of service.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 20.11.2015 (Annexure P-3) passed by Civil Judge (Junior Division), Mewat, vide which the application filed by the petitioner under Order 7 Rule 11 for rejection of the plaint has been dismissed.

Briefly, the facts of the case as made out in the present petition, are that respondents No. 1 to 7-plaintiffs filed a suit for declaration with consequential relief of permanent injunction claiming themselves to be the co-owner of the suit property alleging that Shiv Charan @ Bhajan Lal was owner in possession of the suit property, who shifted to village Nand Gaon and the land in dispute was given to predecessors of respondent Nos. 8 to 39 to irrigate the same. It was further alleged that the predecessors, in interest

of respondents No. 8 to 39, filed a suit titled as **Shiv Charan Vs. Shyam Lal**, which was got compromised. Respondents No. 8 to 39 claimed themselves to be the owner in possession of the suit property by way of adverse possession and the suit filed by Shiv Charan was dismissed vide judgment and decree dated 28.12.1967. Thereafter mutation was sanctioned in favour of respondents No. 8 to 39. The petitioner purchased a share from some of the co-owners vide sale deed dated 14.7.2008 for a valuable consideration of ₹80 lacs and filed an application under Order 7 Rule 11 CPC for rejection of the plaint inter alia contending that respondents No.1 to 7-plaintiffs were claiming inheritance of Shiv Charan @ Bhajan Lal and challenging the mutation, which was sanctioned on 14.2.1970 on the basis of judgment and decree dated 28.12.1967, so the present suit was hopelessly time barred and the same was filed without paying ad valorem Court fee on the sale consideration of ₹80 lacs. It was also averred that no cause of action had arisen against the petitioner. Said application was contested by respondents No.1 to 7-plaintiffs and ultimately it was dismissed vide order dated 20.11.2015, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that while dismissing application the learned trial Court has not appreciated the fact that the respondents No.1 to 7-plaintiffs are claiming the rights of Shiv Charan @ Bhajan Lal, who had transferred the land vide judgment and decree dated 28.12.1967 as since then the defendants are owner in possession of the same. Learned counsel further contends that Shiv Charan @ Bhajan Lal died on 25.11.1984 and the suit was filed by respondents No.1 to 7-plaintiffs in the year 2013 i.e. after 45 years from the date of

decree and after 28 years from the date of death of their predecessor. Learned counsel also contends that the suit cannot be said to be filed within the period of limitation and as such the same was barred by limitation. It is also the argument of learned counsel that respondents No.1 to 7-plaintiffs have impleaded the petitioner as one of the defendants but did not challenge the sale deed vide which the petitioner purchased the suit property. As per provisions of Order 7 Rule 11 CPC, the plaint should have been rejected as it does not disclose any cause of action. Learned trial Court while disposing of the application has wrongly held that the issue of limitation is a mixed question of law and fact and the same can be decided by leading evidence only. Learned counsel also contends that the observations made by the trial Court that respondents No.1 to 7-plaintiffs were not required to pay ad valorem court fee on sale consideration is not sustainable, as respondents No.1 to 7-plaintiffs are claiming their right being successor of Shiv Charan @ Bhajan Lal. The petitioner who had purchased the suit property for a consideration of ₹80 lacs, ad valorem court fee has to be paid by respondents No.1 to 7-plaintiffs. At the end, learned counsel for the petitioner submits that the suit filed by respondents No.1 to 7-plaintiffs is not maintainable as they have not claimed possession of the suit property and the suit for declaration without seeking possession is not maintainable.

None has appeared on behalf of the respondents inspite of service.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned order and other documents available on the file.

While dismissing the application filed under Order 7 Rule 11

CPC for rejection of the plaint, the following findings have been recorded by the trial Court:-

“After hearing the arguments and perusing the case file, it is found by the Court that the main contention of the applicant/defendant is that the suit of the plaintiffs is barred by limitation; however the same is mixed question of law and facts and same can only be decided by leading evidence. Further, as per the applicant/defendant that the plaintiff has not paid ad volerum Court fee as he has challenged the sale deed; however, perusal of the case file shows that the plaintiffs were not party of the sale deed. In this context the Court has placed relied upon **Smt. Santosh Malhan and another Vs. Naina Devi and others** 2014 (1) PLJ 237 and **Charan Singh Vs. Mohinder Kaur and another** 2010 (4) PLR 183. As per the holding of the Hon'ble High Court Punjab and Haryana only executant has to pay the ad volerum Court fee. In the present case the plaintiff himself is not executant of the alleged sale deed.”

Respondents No.1 to 7-plaintiffs filed the suit for declaration with consequential relief of permanent injunction by claiming themselves as the legal heirs of Shiv Charan @ Bhajan Lal. They have also challenged mutation No. 645 sanctioned on 14.2.1970 by Assistant Collector Ist Grade on the basis of order passed by the Civil Court in civil suit titled as **Shiv Charan @ Shyam Lal** decided on 28.12.1967. As per case of the petitioner, respondents No.1 to 7-plaintiffs have challenged the mutation sanctioned on 14.2.1970 after a delay of approximately 45 years and the suit of respondents No.1 to 7-plaintiffs is time barred and the same is liable to be

dismissed. As per case of the petitioner, she is bona fide purchaser of the suit land and has purchased the same vide registered sale deed dated 14.7.2008 and mutation was also entered in the revenue record, which has been challenged by respondents No.1 to 7 (plaintiffs) without paying ad valorem court fee and the suit is liable to be dismissed for want of insufficient court fee. While dismissing the application by the trial Court, it has been observed that question of limitation is a mixed question of fact and law and it can be decided by leading evidence from both the sides. It has also been observed that the plaintiffs were not party to the sale deed and only the executant has to pay the ad valorem Court fee and as the plaintiffs have not executed the sale deed and as such they were not required to pay ad valorem Court fee.

Issue of limitation can be decided on the basis of evidence to be led by both the parties being a mixed question of fact and law and the plaint cannot be rejected at the initial stage without leading any evidence. The same issue was there for consideration before this Court in the case of **Smt. Santosh Malhan and another Vs. Naina Devi and others** 2014 (1) PLJ 237, wherein, it has been held that in case the plaintiff is not executant of the sale deed then he is not required to pay ad valorem Court fee. Said case was decided by following the ratio of judgment passed by Hon'ble the Apex Court in the case of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh** 2010 AIR (SC) 2807.

In the present case, respondents No.1 to 7-plaintiffs have sought relief of declaration as well as consequential relief of permanent injunction but have not claimed possession and as such they are not liable to pay ad valorem court fee as has been held by this Court in the case of

Charan Singh Vs. Mohinder Kaur and another 2010 (53) RCR (Civil)

353. Hon'ble the Apex Court in the case of **Vaish Aggarwal Panchayat Vs. Inder Kumar and others** 2015 AIR (SC) 3357 has held that a civil suit cannot be dismissed under Order 7 Rule 11 (d) CPC being barred by limitation without proper pleadings, framing of issue on limitation and taking evidence as the question of limitation is a mixed question of fact and law and on ex-facie reading of the plaint, it could not be held that the suit was barred by limitation. Same view was taken by Hon'ble the Apex Court in the case of **Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others** 2006 (5) SCC 638, wherein, it has been held that the plea of limitation is mixed question of fact and law, the plaint cannot be rejected under Order 7 Rule 11 (d) CPC.

In view of the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and as such the petition being devoid of any merit is hereby dismissed.

19.5.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes