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

**Civil Revision No.4311 of 2017 (O&M)
Date of Decision: 06.07.2017**

DHARAM SINGH

.....Petitioner

Vs

MAYA DEVI AND ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.K. Tripathi, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged the order dated 01.05.2017 (Annexure P-4) passed by Civil Judge (Jr. Divn.) Rewari vide which application filed by him under Order 7 Rule 11 CPC was rejected.

[2]. Petitioner staked his claim in the aforesaid application on two counts, firstly that defendant No.2 has not fixed ad valorem court fee on the plaint and secondly the suit is barred by limitation.

[3]. Evidently, the plaintiff/respondent No.1 has not claimed possession of the suit property, nor she was executant of the sale deed. If, an executant of a sale deed wants to get it

annulled, he or she has to seek cancellation of the same. But, if a non-executant of the deed seeks annulment of a deed, he or she has to seek declaration that the deed is invalid or *non-est* and that is not binding upon him or her. On the basis of law laid down in **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors, 2010(2) RCR (Civil) 564**, the first contention of the defendant/petitioner cannot be entertained as the plaintiff was non-executant of the deed and does not claim possession of the property, Therefore, Article 1 Schedule 1 of the Court Fee Act is not attracted.

[4]. Secondly, the plaintiff claims the suit property as ancestral and coparcenary property. The stand of the defendant/petitioner is that it is a self-acquired property of Thandi Ram. The plea of limitation is a mixed question of law and facts and the same would be decided at the relevant stage on the basis of evidence. It is true that under Section 3 of the Limitation Act, Court is obligated to see whether suit is within limitation or not, even if plea of limitation is not set up as a defence, but when the plea of limitation is dependent upon pleadings of the parties and material evidence likely to be adduced at the relevant stage, such a plea of limitation cannot be raked up in terms of Order 7 Rule 11 CPC.

[5]. The plaintiff has based her claim on the basis of suit

land being coparcenary. Challenge to the mutation of inheritance was made much prior to amendment of Hindu Succession Act, 2005 (for short 'the Act') in the year 2005. The applicability of Section 6 of the Act will be debatable in the context of limitation being a mixed question of law and facts. The defendant/petitioner, if so, advised can seek framing of preliminary issue of limitation by way of moving appropriate application before the trial Court.

[6]. In view of above, no interference is called for in the present revision petition, the same is accordingly dismissed.

July 06, 2017

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No