

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4688 of 2017 (O&M)

Date of Decision:11.08.2017

Shyam Narayan Tewari

...Petitioner

Versus

Jai Devi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Lamba, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Defendant is in Revision Petition against dismissal of application under Order 7 Rule 11 of CPC filed by him.

Defendant-petitioner had submitted that the suit is barred by limitation. He had further submitted that the proper Court fee has not been affixed.

Learned trial Court after appreciating the assertions made in the plaint, found that the plaintiff has already affixed the Court fee to the extent of Rs.53,300/- as per Collector rate. Learned trial Court further found from the reading of the plaint that the suit does not appear to be barred by limitation. It was further recorded that the question of limitation is mixed question of law and fact and that can only be adjudicated once the parties are given opportunity to lead evidence.

Counsel for the petitioner has submitted that the order passed

by the trial Court is erroneous. He further submitted that the plaintiff had filed the suit in 2014, whereas the plaintiff claims that he had purchased the property on 21.04.1980. Therefore, prima facie, the suit was barred by limitation.

I have considered the submission of the learned counsel.

The plaintiff had filed a suit for possession and mandatory injunction. Plaintiff had claimed that he had purchased the property through a registered sale deed dated 10.04.1980. He further claims that thereafter he started living in Canada and on his return from Canada to India, he came to know that defendants have illegally and forcibly encroached upon the plot in question. It was claimed by the plaintiff that the cause of action accrued in his favour in September, 2011 and thereafter, on various dates.

Question of limitation is always the mixed question of law and fact. The plaintiff would be required to prove that how his suit is within limitation.

As regards the submission of the petitioner that proper ad valorem Court fee has not been affixed, the Court has noticed that Court fee has been paid as per Collector rate.

Finding no merit in the present revision petition, the same is dismissed.

(ANIL KSHETARPAL)
JUDGE

11.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No