

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

(120)

CR-7547-2016

Decided on: July 14, 2017.

Parkash Devi and others

.... Petitioners

Versus

Roshni and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Vikram Singh, Advocate, for the petitioners.

M.M.S. BEDI, J (ORAL)

This is defendant's revision petition against the order dated 06.08.2016 dismissing the application under Order 7 Rule 11 CPC claiming that the suit of the plaintiff-respondents was barred by time on account of registered Will dated 16.09.1982 having been challenged after the period of limitation.

I have heard learned counsel for the petitioner and gone through the order passed by the Court below and I am of the opinion that a Will can be challenged when cause of action arises. The circumstances of the present case do not warrant the rejection of the plaint under Order 7 Rule 11 CPC. However, the plea raised in the application can be taken up by the defendants in the written statement. Dismissal of the application will not debar the defendants from raising the said plea in the written statement for adjudication.

The petition is thus liable to be dismissed without prejudice to the other legal rights of the petitioners.

Learned counsel for the petitioners, at this stage, submits that there being no cause of action, the suit is liable to be dismissed outrightly.

The said plea of absence of cause of action is a mixed question of law and fact and could not have been adjudicated upon by the trial Court at the stage of decision of application under Order 7 Rule 11 CPC. The said plea is rejected at this stage.

Dismissed.

(M.M.S. BEDI)
JUDGE

July 14, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No