

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

**CR No. 78 of 2017
Date of Decision:- 12.01.2017**

Smt. Suman DeviPetitioner

vs.

Smt. Rewati Devi & anotherRespondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

DAYA CHAUDHARY, J. (Oral)

Learned counsel for the petitioner submits that the application moved by the petitioner was for framing of issue regarding maintainability of the suit under Order 2 Rule 2 CPC as well as issue of limitation whereas while dismissing the application, only the issue of limitation was considered and the issue relating to maintainability of suit under Order 2 Rule 2 CPC was not discussed.

The relevant portion of the application as mentioned in para No. 5 is reproduced as under:-

“1- Whether the suit is barred under Order 2 Rule 2 C.P.C.?

2- Whether the suit filed by plaintiff is time barred?

3- Whether for want of not affixing proper court fee i.e. ad valorem court fee according to the market value of the disputed property?”

While dismissing the application, simply it has been mentioned that earlier issues were framed vide order dated 20.4.2011 and issue regarding limitation has already been framed and no fresh issue is required to be framed. Nothing has been said with regard to issue as to whether the suit is barred under Order 2 Rule 2 CPC.

On perusal of impugned order, it transpired that this aspect has not been touched by the Civil Court as only the issue of limitation has been discussed and application moved by the petitioner has been dismissed.

Accordingly, the present petition, without issuing any notice to other party is partly allowed as it would unnecessary burden the other party by appearance before this Court, the impugned order dated 21.12.2016 is set aside and the trial Court is directed to consider the aspect with regard to issue as to whether the suit is barred under Order 2 Rule 2 CPC by passing a speaking order and after considering the submissions as made in the application or raised during the arguments.

Disposed of.

January 12, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No