

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

136

CR No.8769 of 2017
Date of Decision:14.12.2017

Jag Mohan Sharma

...Petitioner

Versus

Urmila and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Narender Kumar Sharma, Advocate
for the petitioner.

ANIL KSHETARPAL, J.(Oral)

Defendant No.3 is in the revision petition against order
dismissing the application under Order 7 Rule 11 CPC.

Learned Court while dismissing the application has observed as
under:-

*“6. In the present case perusal of the plaint shows
that the present suit is alleged to have been based on a
compromise between the parties and the plaintiff is in
possession of the suit land and is claiming direction to
the defendants to execute the sale deed, which was
already been the subject matter of a suit which was
withdrawn, hence at this stage this court is of the
considered view that the matter pertaining to insufficient
court fees can be decided only after leading of evidence
on the same and hence, at this stage this court does not
deem it appropriate to direct payment of ad valorem
court fees, which in the facts and circumstances of the*

present case, can only be decided after leading of evidence on this aspect.

7. Even with regard to the ground that the present suit is barred by the law of limitation, in the present case the question of limitation can be finally decided only after appreciation of evidence with regard to the fact as to when and how the compromise was arrived at and from when the period of limitation would actually begin to be counted.”

I have heard learned counsel for the petitioner at length and with his able assistance gone through the documents filed. He has submitted that prayer No.2 made in the suit is contradictory. He submits that such prayer could not be made in the suit.

I have considered the said submission.

A look at the plaint would show that there was an earlier litigation between the parties and defendant No.3 had undertaken to get the sale deed registered in favour of the plaintiff. The assertions made by the plaintiff in Para Nos.6 and 7 of the plaint are as under:-

“6. That a compromise taken between the defendant No.1,2 with 3 according which the defendants No.1 & 2 have compensated regarding the suit property which was in possession of the plaintiff and the defendant No.3 to got cancelled the above said FIR against the plaintiff, her husband and Shri Satbir Sharma, Rakesh and Dhanesh. The defendant No.3 also withdrawn the civil suit titled as Jagmohan Sharma Vs.

M/s Reliance etc. from the court Ms. Bhawna Jain the then Civil Judge, Sr. Division, Faridabad.

7. That a compromise taken between the defendant No.3 in the said civil suit in which and the defendant No.3 recorded his statement that the defendant No.3 will get executed and registered the sale deed in favour of the plaintiff and the plaintiff has right to collect the amount of rent from Reliance communications. The suit was dismissed as withdrawn vide order dated 10-03-2009 from the court of Mrs. Bhawna Jain the then Civil Judge, Faridabad.”

In view of the aforesaid facts, which have been reproduced, there is no force in the submission of learned counsel. Still further, before the learned trial Court, petitioner had not pleaded for rejection of the plaint on this ground. Petitioner had prayed that the plaint be rejected on account of the suit being time barred and non-affixation of proper Court fee.

Learned counsel for the petitioner has not challenged the correctness of the observation made by the Court.

Hence, this revision petition is dismissed.

14.12.2017
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No