

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

CR-8965-2017 (O&M)
Date of decision: 20.12.2017

Avninder Singh

...Petitioner

Versus

Opinder Kaur and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. G.S. Chhina, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

Challenge in the present petition has been directed against order dated 25.09.2017 (Annexure P4) passed by the Civil Judge (Jr. Div.), Samrala whereby application under Order 7 Rule 11 of the Code of Civil Procedure (in short 'CPC') for rejection of plaint, has been dismissed.

The sole submission made by counsel is that the respondent/plaintiffs by way of the present suit filed in the year 2016 has challenged Rapat No. 21 of 2007 qua attachment of property in question, plaint is liable to be rejected being barred by limitation, thus, barred by law under Order 7 Rule 11 CPC.

Opinder Kaur and others, daughters of the present petitioner have filed a suit for joint possession to the extent of 3/4th share out of land measuring 10K-12-9/10M, detailed in head note of the plaint. They have also sought to challenge Rapat No.21 dated 20.09.2007 regarding

attachment of property of the petitioner. In para 9 of the plaint, it has been averred that cause of action to file the suit arose some days back i.e. dated 25.01.2016 when the plaintiffs came to know regarding the alleged act. Not only this, in para 5 it has been alleged that when the plaintiffs obtained copy of *jamabandi* they came to know regarding Rapat No.21 dated 20.09.2007 which is not binding upon the plaintiffs.

As per the settled position in law, application under Order 7 Rule 11 CPC is to be decided on the basis of averments made in the plaint and the documents relied upon by the plaintiff. At this stage, plea raised in defence or allegations raised in the application for rejection of plaint and documents relied upon by the defendant(s) are irrelevant and cannot be taken into consideration. In this context, reference can be made to judgment of Hon'ble the Supreme Court **The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman VS. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, 2012(3) RCR (Civil) 811.**

Taking into consideration averments made in the plaint, the trial Court has rightly held that the question of limitation is a mixed question of law and fact and the same needs to be decided on the basis of evidence to be adduced by the parties. In this view of the matter, contention raised by the petitioner is not meritorious and deserves to be rejected outrightly. That being so, no interference in exercise of supervisory jurisdiction is justified.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. Nothing stated hereinbefore shall cause prejudice to either of parties at the time of final adjudication by the Court below.

20.12.2017
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No