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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 87/2017

AMARJEET KAUR

..... Petitioner

Through: Mr.Arvind Sharma, Advocate.

versus

PARMINDER KAUR & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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22.05.2017

CM No.13474/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

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1. The petitioner is aggrieved by the order dated 16th February, 2017 whereby the application filed by her under Order VII Rule 11 CPC for the rejection of the plaint in Civil Suit No.2360/16 has been dismissed by the learned Trial Court.
2. Learned counsel for the petitioner has drawn the attention of this Court to the fact that the Civil Suit No.2360/2016 was on the basis of Relinquishment Deed dated 24th September, 2009 and declaration could have been sought within the period of three years from the date of execution of the relinquishment deed, hence the suit was barred by limitation.
3. Learned Trial Court dismissed the application for the following reasons:

*“6. There is no dispute as to ratios laid down in the judgments cited on behalf of defendant No.1. However in **Alka***

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Garg vs. Sanjay Karir & Anr. (supra) wherein it has been held that the cause of action to sue accrues to a person only when fraud comes to his knowledge and as per Article 59 of the Limitation Act the period of limitation starts when the facts entitling the plaintiff to have the instrument cancelled first become known to him.

7. The claim of the defendant No.1 that suit of the plaintiff is time barred as Relinquishment deed was executed in the year 2009 and suit has been filed in 2015, whereas case of the plaintiff is that in the year 2015 the defendant No.1 refused to partition the property and cause of action begins to run from 2015, hence, the suit has been filed well within limitation. These all are mixed questions of fact and law and an appropriate issue will be framed at the time of framing of issue. However, merely on the facts set up by the defendant No.1 in the application, the plaint cannot be rejected. Facts set up in the plaint as well as in the written statement can be proved only by way of leading evidence after framing of issues. Hence, there is no merit in the application. Accordingly, application of defendant No.1 under Order VII Rule 11 of CPC is dismissed.”

4. Learned Trial Court has specifically noted in the impugned order that the suit has been filed not only for declaration but also for partition and also for permanent injunction.

5. Learned Trial Court has also examined the issue of applicability of Article 59 of the Limitation Act as per which the cause of action to issue would accrue only when fraud came to the knowledge.

6. For the purpose of applicability of Order VII Rule 11 CPC, the averments made in the written statement are not to be considered. The learned Trial Court has rightly held that merely on the fact set up of defendant No.1 the plaintiff cannot be rejected and that the issue involved is mixed question of fact and law which can be determined only after parties are given an opportunity to lead defence evidence.

7. The scope of power of this Court under Article 227 of the Constitution is not in the nature of appellate jurisdiction and so, the extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Thus, in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this court in its supervisory power under Article 227.

8. The impugned order does not suffer from any illegality or perversity.

9. The petition is dismissed.

CM No.13473/17

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 22, 2017

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