

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.3458 of 2017 (O&M)

Date of decision:29.11.2018

Umesh Kumar and another

... Petitioners

Vs.

Satish Jain

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Namit Gautam, Advocate
for the petitioners.

Mr. Saurav Dhir Pavit, Advocate
for the respondent.

AMIT RAWAL J.(Oral)

The present revision petition is directed against the impugned order dated 07.04.2017 (Annexure P-7), whereby, in a suit (Annexure P-4) claiming the following relief:-

“Suit for a decree for declaration to the effect that the plaintiff is having easementary right to use the common passage marked at ABCD as shown in the red colour in the site plan and further for declaration to the effect that the plaintiff is owner in possession of land shown in green colour in the site plan attached on the basis of registered sale deed bearing no.594 dated 31.03.1975 and further for mandatory injunction directing the defendants to demolish the illegal construction raised by them over the land shown in orange colour in the site

plan alongwith consequential relief of permanent injunction restraining the defendants from interfering into the easement rights of plaintiff over the 15ft. Wide common rasta as shown in ABCD in red colour in the site plan attached and further restraining the defendants from raising any sort of construction over the property shown in orange colour in the site plan, without getting the site plan sanctioned from the concerned authority.”

an application filed under Order 7 Rule 11 of Code of Civil Procedure has been dismissed.

Mr. Namit Gautam, learned counsel appearing on behalf of the petitioners submitted that the respondent-plaintiff is in habit of filing of perpetual suits. One of suits is at Annexure P-9 claiming the following relief:-

“Suit for a decree for declaration to the effect that the plaintiff is the absolute owner and is in physical possession of the land measuring 1 bigha 3 ½ biswas of land with specific dimensions:

North :building of M/s Phaggu Mal Jiwa Ram

South :Open land belonging to Mr. Bogra

East :House of Lala Kishori Lal Sood

West :Building of Mr.Bogra

Comprised in khasra no.252 total measuring (2 bigha 7 biswas) situated at village Kurari Tehsil Kalka District Panchkula

Haryana by virtue of sale deed bearing certificate no.594 dated March 31, 1975 duly registered in the office of Sub-Registrar Kalka along with all the rights appurtenant thereto and therein.

AND

Further for a decree for Mandatory Injunction, directing the defendants to execute and register the Tatima Sale Deed of the suit property by specific mentioning the khasra number and Municipal Survey Number of suit property to enable the plaintiff to get the mutation sanctioned in his favour.

AND

Further for a decree for Permanent Injunction, restraining the defendants themselves or through their agents, servants or assignees from alienating the suit property by way of sale, transfer and mortgage in any manner whatsoever and further restraining the defendants from changing the nature of the suit property illegally and forcibly.”

wherein, the similar application filed under Order 7 Rule 11 CPC, vide order dated 23.08.2016 (Annexure P-12) was allowed, though the appeal is pending. The suit is *ex facie* barred by law of limitation under Order 2 Rule 2 CPC.

Mr. Sourav Dhir Pavit, learned counsel appearing on behalf of the respondent submitted that all the aforementioned objections can be taken in the written statement which would be subject matter of adjudication as well as framing of issues being the mixed question of facts and law and

thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

The order dated 23.08.2016 (Annexure P-12) rejecting the plaint (Annexure P-9) is not a final order. It is yet tot be seen whether the findings arrived at are to be affirmed or otherwise. However, the ground taken, as noticed above, in my view, cannot be outrightly taken into consideration for rejection of the plaint as it is a mixed question of facts and law. The petitioners are at liberty to take all possible objections in the written statement. Issue qua maintainability can be pressed as preliminary, if need be, but not in the above manner and mode.

While upholding the order under challenge, the revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

November 29, 2018
savita

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