

In the High Court of Punjab and Haryana at Chandigarh

.....

Civil Revision No.3690 of 2018

.....

Date of decision:30.5.2018

Rajinder

.....Petitioner

v.

Randhir Singh and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Parminder Singh, Advocate for the petitioner.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 16.5.2018 (Annexure-P.5) passed by the learned Civil Judge (Junior Division), Karnal, whereby the application filed under Order 7 Rule 11 CPC for rejection of the counter claim has been dismissed having against the interest of the co-defendant; barred by limitation; and non-availability of prayer for injunction of perusing the legal remedy.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that a suit had been filed by Rajinder-plaintiff against Randhir Singh and others-defendants for declaration with consequential relief of permanent injunction. During the pendency of the suit, an application under Order 7 Rule 11 CPC read with Section 151 CPC was filed by the plaintiff for rejecting the counter claim filed by defendant

No.1 (respondent No.1 herein). It has been stated in the application that the plaintiff had filed the present suit for declaration and permanent injunction against the defendants seeking the relief that entire partition proceedings held in case Nos.120/NTP and 121/NTP are illegal, null and void and not binding upon the plaintiff and consequently, a prayer for grant of relief of permanent injunction restraining the defendants from forcibly dispossessing the plaintiff from the suit land has been made.

Defendant No.1 filed the written statement as well counter claim challenging the judgment and decree dated 16.2.2013 passed by the Court of learned Additional District Judge, Karnal, on the ground of same being fraudulent, illegal, null and void and has further sought injunction against the plaintiff and defendants No.2 to 12 restraining them from interfering in the partition proceedings held in case Nos.120/NTP and 121/NTP.

It has been argued before the lower Court that the counter claim filed by defendant No.1 is hopelessly time barred as the same has been filed after lapse of five years from the date of judgment and decree dated 16.2.2013. It has been argued that defendant No.1 has sought injunction against defendants No.2 to 12 restraining them from contesting the litigation which cannot be granted as no one can be restrained from contesting a litigation. It has been argued that even otherwise, a counter claim is not maintainable against defendant/ co-defendant and the same is liable to be rejected.

The application was opposed by defendant No.1 and stated that it has been filed to delay the proceedings. It has been stated that the

plaintiff and defendant No.2 colluded with each other and fraudulently procured judgment and decree dated 16.2.2013 by concealing the true and material facts from the Court without impleading defendant No.1 as party to suit just to defeat his rights. It has been stated that there is no limitation for setting aside a judgment and decree which has been obtained by playing fraud and thus, bar of limitation in the present case will not apply. It has been stated that the counter claim has been directed against the plaintiff and defendant No.2 as they had acted in collusion with each other.

The learned Civil Judge (Junior Division), Karnal, vide impugned order dated 16.5.2018 dismissed the application filed by the plaintiff (present petitioner).

A perusal of the impugned order shows that this order has been passed correctly as per law and does not require any interference from this Court. Defendant No.1 is alleging that the decree dated 16.2.2013 is a result of fraud, collusiveness of plaintiff and defendant No.2 and without impleading defendant No.1 as party to defeat his rights. The decree which has been challenged by defendant No.1 on the ground of fraud, the limitation period will not start from the date of decree, rather, it will start when this fraudulent decree has come to the knowledge of defendant No.1. Otherwise also, the period of limitation is a mixed question of fact and law and it is to be determined by the lower Court on the basis of evidence produced by the parties. Therefore, on this ground the counter claim cannot be rejected.

As regards the second ground, defendant No.1 is also claiming injunction against the plaintiff. It is for the Court below to decide whether

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the injunction is to be granted or not. At this stage, there is nothing from which it can be held that the counter claim is not maintainable and this is to be also decided at the time of final disposal of the case.

Therefore, the learned lower Court has rightly dismissed the application filed under Rule 7 Order 11 read with Section 151 CPC. The impugned order dated 16.5.2018 passed by the learned Civil Judge (Junior Division), Karnal, is correct as per law and no illegality has been committed while passing the order and it does not require any interference from this Court and is upheld.

Finding no merit in this civil revision petition, the same is accordingly dismissed.

May 30, 2018.

**(Inderjit Singh)
Judge**

hsp

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