

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.4666 of 2016 (O&M)

Date of Decision: May 25, 2018

Dharam Pal

...Petitioner

Versus

M/s Awards Securities Pvt.Ltd. & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Kunal Dawar, Advocate,
for the petitioner.

AMIT RAWAL, J.

Present revision is directed against the impugned order dated 18.5.2016, whereby the application submitted by the petitioner-defendant No.3 for dismissal of the suit for declaration and permanent injunction in respect of the suit property, has been dismissed.

Mr.Kunal Dawar, learned counsel for petitioner-defendant no.3 submitted that prior to the filing of the suit aforementioned, one Ram Chand had instituted a suit against Asha Rani, Jai Parkash, Jai Ram and M/s Awards Securities Pvt.Ltd. for declaration and injunction, i.e., Civil Suit No.855 of 1997. The aforementioned suit was decreed vide judgment and decree dated 5.6.2002, whereby the plaintiff therein was declared to be owner of having acquired the occupancy right in the suit land and defendants had lost their right of ownership and enjoined from alienating the suit property in any manner. The plaintiff assailing the aforementioned judgment and decree filed the present suit in the year 2014 for declaration and permanent injunction in respect of the agricultural land, which was subject matter of the previous suit. It is in that aspect of the matter, the application under Order 7 Rule 11 of CPC was filed.

It was next contended that in the aforementioned suit respondent-plaintiff had filed an application under Order 9 Rule 13 of CPC for setting-aside the ex-parte judgment and decree, but the same was dismissed for non-prosecution vide order dated 30.7.2007 (Annexure P-5). No explanation has come forth for not pursuing the application and filing of separate suit, is not maintainable in the eyes of law, but the Court below had abdicated in dismissing the application by holding that the question of limitation was a mixed question of law and could be only decided after giving opportunity of leading evidence, for, the judgment and decree dated 5.6.2002, ex-parte proceedings and dismissal of the application in default had not been denied.

There was no representation on behalf of the respondents despite service as was noticed in the order dated 20.3.2018. Today also, there is no representation on their behalf, therefore, this Court deems it appropriate to decide the revision petition on merits.

I have heard the learned counsel for the petitioner, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioner, for, the facts as noticed above are not in dispute. The prayer in the previous suit dated 2.9.1997 sought against the plaintiff herein, who was defendant No.4 in the previous suit, reads as under:-

“Claim:- A decree for declaration to the effect that the plaintiff has acquired occupancy rights in the suit land comprising in khewat/khatoni no.1/5, rect.no.16, killa no.1 (6-13), 10 (5-13), 11 (7-12), 20/1 (2-0), rect. no.17, killa no.15/2 (1-2), 16 (2-8), totalling 25 kanals 8 marlas, situated within the revenue estate of village Akbarpur Notal, Tehsil Hathin, Distt.Faridabad and the defendants have lost their ownership rights therein may

kindly be passed in favour of the plaintiff and against the depts.with costs of the suit as a consequential relief of the said declaration a decree for permanent injunction restraining the depts.from alienating the suit land in any manner be also passed in favour of the plaintiff and against the defendants.”

After the aforementioned judgment and decree, an application dated 12.8.2002 for setting-aside the ex-parte judgment and decree had been dismissed in default vide order dated 30.7.2007. The present suit had been filed in the year 2014, i.e., after about seven years from the dismissal of the application under Order 9 Rule 13 CPC.

An attempt was made to challenge the judgment and decree dated 5.6.2002 in 2014. The limitation to challenge the judgment and decree is 3 years from the date of knowledge. The knowledge cannot be said to be wanting, for, the respondent-plaintiff, who was arrayed as defendant No.4, had moved an application under Order 9 Rule 13 of CPC in 2002, which was dismissed in default in 2007. Thus, the suit in 2014 was *ex-facie* barred by law of limitation. The subject matter is the same in the previous suit and the present suit. In such circumstances, I am of the view that the trial Court should have framed the issue of limitation by giving opportunity to lead evidence.

As an upshot of my aforementioned findings, the impugned order is set-aside and the application under Order 7 Rule 11 of CPC is allowed. Suit of the respondent-plaintiff (Annexure P-6) is hereby rejected.

May 25, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No