

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5377 of 2016
Date of Decision: December 14, 2018

Chander Pal & others

...Petitioners

Versus

Rahul & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Johan Kumar, Advocate,
for the petitioners.

Mr. Adarsh Jain, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present revision is directed against the impugned order dated 11.07.2016, whereby the application under Order 7 Rule 11 CPC filed on behalf of the petitioner-defendants for rejection of the plaint being barred by law of limitation, has been dismissed.

Ms. Johan Kumar, learned counsel for the petitioner-defendants has contended that the respondent-plaintiffs instituted the suit for possession with consequential relief of permanent injunction by asserting their majority in 1993 and 1995 and, therefore, the suit filed in the year 2012 was barred by law of limitation in view of the provisions of Section 3 of the Limitation Act in the absence of any specific plea.

Mr. Adarsh Jain, learned counsel appearing on behalf of the respondent-plaintiffs submitted that the objection of limitation is a mixed question of fact and law which can always be adjudicated by leading

evidence and, therefore, the suit cannot be thrown out as all pleas can be taken in defence and, thus, urged this court for dismissal of the petition.

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

No doubt, the petitioners have attempted to make out a case of suit being barred by law of limitation by giving the date of birth of plaintiffs No.4 and 5 in 1993 and 1995, but the fact of the matter is that the birth certificate is yet to be proved on record. That can always be done by adjudication of issue on merit. In view of the law laid down in **Soumitra Kumar Sen Versus Shyamal Kumar Sen & Ors., 2018(2) R.C.R. (Civil) 223**, the plaint cannot be discarded or rejected on account of the purported defence of the petitioners.

It is made clear that the petitioner-defendants shall be at liberty to urge for framing of issue of limitation as preliminary.

Revision petition, while upholding the order under challenge, stands disposed of.

December 14, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No