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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.6485 of 2018

Date of Decision:11.10.2018

Amrik Singh and another

.....Petitioners

Vs.

Jasvir Singh and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Sukhwinder Singh Kamboj, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (Oral)

By this petition the petitioners challenge the order of the learned Civil Judge (Senior Division) (NRI Court), Jalandhar, dated 06.11.2017 (Annexure P-5), by which the petitioners' application under Order VII Rule 11 of the CPC, seeking rejection of the plaint in the suit filed by respondents no.1 to 3 herein, has been dismissed.

Vide their suit, the plaintiffs are seeking a declaration that they are the exclusive owners in possession of the suit land measuring about 5 kanals and 9½ marlas, further seeking a declaration that the judgment and decree passed in Civil Suit no.6675/2012, decided on 08.05.2013, instituted by the present petitioners against one Resham Kaur and others, was a decree that was null and void and was a result of fraud and mis-representation, therefore, “not binding upon the legal rights of the plaintiffs in the present suit (respondents herein). They also seek a decree of prohibitory injunction against the petitioners.

The parties to the suit are descended from a common ancestor, three degrees upwards.

The contention of the petitioners/defendants, in the said application, was that, firstly, there was no relinquishment deed placed on record to show that the predecessor-in-interest of both the parties, Smt.Indi had relinquished any land in favour of her brothers, (also the predecessor-in-interest of the petitioners) and secondly, that the suit was barred by limitation.

The respondents/plaintiffs, in reply to the application, had submitted that the property originally belonged to Narain Singh, who had two sons, i.e Amar Singh and Inder Singh, as also two daughters, Indi and Nandi, all of whom inherited the property equally after the death of Narain Singh, but the sisters, i.e. Indi and Nandi, relinquished their shares in favour of their brothers, i.e. Amar Singh and Inder Singh, in equal shares, with possession also delivered to them and since then Amar Singh and Inder Singh had been enjoying the fruits of the property in their life times.

After the death of Amar Singh, his son, Pritam Singh, is stated to have inherited the property and on the death of Pritam Singh, it was inherited by the plaintiffs, i.e. his sons and daughter.

Similarly, after the death of Inder Singh the property was inherited by his sons, Charan Singh and Purkha Singh, and after the death of Charan Singh, the property was inherited by the present petitioners, i.e Amrik Singh and Satpal Singh sons of Charan Singh, alongwith their sisters Swarni and Bindi. Thus, as per the case of the plaintiffs, i.e.

respondents no.1 and 2 herein, they became lawful owners in possession of the suit property to the extent of their shares.

They also denied the will set up by the present petitioners, stated to have been executed by Indi, in favour of Charan Singh.

Yet further, it was contended that the plaintiffs were actually in possession of their shares in the suit property, but with plaintiff no.1 living in Canada, he was informed by his mother (plaintiff no.2 being a deaf and dumb person), that the present petitioners, i.e. defendants no.1 and 2, had started threatening to take over the property of the plaintiffs.

Thereafter, plaintiff no.1, upon having come to India, is stated to have come to know that on the basis of a decree passed in favour of the petitioners on 08.05.2013, in Civil Suit No.6675 of 2012, a mutation of ownership had been entered in favour of the petitioners, the plaintiffs not being party to the said suit.

The learned trial Court after considering the aforesaid facts, first noticed that the plaintiffs had sought a declaration of ownership of the land to the extent of a 1/24th share therein, measuring about 5 kanals and 9-1/2 marlas, (further seeking a declaration that the judgment and decree passed in Civil Suit no.6675 of 2012, be declared to be illegal, null and void and therefore not binding upon them). Noticing that, the contention of the petitioners-defendants that no cause of action arose as it was a 'fantastic claim' raised by the plaintiffs, was rejected, holding that with the petitioners seeking a declaration to the aforesaid extent in their favour, cause of action arose to them to file a suit against the defendants.

The issue of limitation has not been dealt with by the trial

Court, which then went ahead to to strike the issues arising in the suit, thereby dismissing the application filed under Order VII Rule 11 CPC.

Before this Court learned counsel for the petitioners has, over the past three dates, argued that the suit filed by the respondents/plaintiffs is beyond limitation, in as much as the claim to the suit property is based on an oral relinquishment made by their predecessor-in-interest, i.e. Indi, in favour of her brothers, i.e. predecessor-in-interest of the parties, with Indi actually having died in the year 1958.

He submits that, therefore, in terms of Article 58 of the Schedule to the Limitation Act, 1963, any declaration which is sought beyond a period of 3 years from the cause of action first arising to the plaintiffs, cannot be said to be within limitation.

In support of his argument, he relies upon a judgment of the Supreme Court in **“Khatri Hotels Private Limited and another vs. Union of India and another”**, AIR 2011 SC 3590, from which he points to paragraph 27, which reads as follows:

“27. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from a day when the right to sue first accrued.”

Having considered the argument, in my opinion, though of course the learned trial Court has not dealt with the issue of the suit being within limitation or not, that however being the issue on which this

petition has been argued, the argument is unfounded at this stage, in as much as, the contention of the plaintiffs in their suit is that they, alongwith the petitioners, remained in joint possession of the suit property, ever since the time it was relinquished in favour of their forefathers, with the petitioners now threatening to dispossess them and therefore, the plaintiffs seek a declaration of ownership of the suit property in their favour, further seeking a decree of prohibitory injunction, restraining the petitioners from interfering in such joint possession.

Thus, as per the plaintiffs, cause of action actually arose to them only recently, when such threats were issued by the plaintiffs (as contended in the plaint), and not at the time when all became joint owners of the suit property, upon a relinquishment having been made by Indi in the 1950s, in favour of their predecessors-in-interest.

Whether or not the plaintiffs can prove that they were actually in joint possession of the suit property, or whether any such threat was issued recently by the petitioners to them, would be a matter of evidence to be led before the trial Court and consequently, the question of rejection of the plaint on the ground of limitation cannot be entertained at this stage.

As regards seeking a decree of nullity *qua* the judgment and decree passed on 08.05.2013 in Civil Suit no.6675 of 2012, admittedly the suit challenging the said decree was filed in the year 2015, i.e within 3 years, and consequently, in terms of Article 59 of the Schedule to the Limitation Act, 1963, the suit would be within limitation *qua* that prayer.

Consequently, finding no merit in this petition, it is dismissed in *limine*.

However, nothing stated hereinabove would be taken to be any observation on the merits of the case of the party, which naturally would be gone into by the learned trial Court wholly on the basis of evidence led before that Court.

(AMOL RATTAN SINGH)
JUDGE

October 11, 2018.
dharamvir/dinesh

Whether speaking/reasoned : YES
Whether Reportable : YES