

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

CR No.724 of 2018

Date of decision:09.02.2018

Rajinder Singh Rathaur

... Petitioner

Vs.

G.S.Rathaur (Ghanshyam Singh Rathaur) and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the petitioner.**

AMIT RAWAL J. (Oral)

Petitioner-defendant No.1 is aggrieved of the impugned order dated 13.12.2017 (Annexure P-8) passed by the Additional District Judge Faridabad, whereby, the appeal preferred by the respondent-plaintiffs against the order dated 19.09.2016, has been allowed and application of the petitioner seeking rejection of the plaint and for restoring the order dated 19.09.2016, has been dismissed.

Mr. Arun Jain, learned Senior counsel assisted by Mr. Varun Parkash, Advocate appearing on behalf of the petitioner-defendant no.1 submitted that the respondent-plaintiff instituted a suit seeking declaration with joint possession and permanent injunction as a consequential relief in respect of the suit land mentioned in Para 1(a) and (b) on the premise that Todar Mal was un-married and died issueless on 09.12.1993. During his life

time, he adopted the petitioner, vide adoption deed No.5595 dated 23.03.1995. Harphool Singh left four sons and seven daughters but he was succeeded by his sons only on the basis of the Will executed by him in their favour. The factum of property being mutated in the name of adopted son, i.e., petitioner/defendant no.1 on demise of Todar Mal was reflected in the revenue record which fact was in the knowledge of the plaintiff and the suit was filed on 31.08.1996 against his father Rattan Lal Rathaur. The aforementioned jamabandi was annexed. However, the suit of 1996, was compromised between the parties. The present suit has been filed in the year 2014, therefore, the same was *ex facie* barred by law of limitation under Article 57 of the Limitation Act. Even Harphool Singh, natural father of the petitioner had executed a registered Will in the year 2001 bequeathing his entire property in favour of other four sons excluding petitioner/defendant no.1 on the premise that he was already adopted by Todar Mal. The trial Court on the basis of all the aforementioned facts, *prima facie*, found that it was a case which falling within the provisions of Order 7 Rule 11 CPC and rejected the plaint. However, the Lower Appellate Court has committed illegality and perversity in restoring the plaint by ignoring the aforementioned fact.

He submitted that no useful purpose would be served in continuing with the suit as it was *ex facie* barred by law of limitation and the Lower Appellate Court was oblivious of the fact that all these facts were in the knowledge of the respondent/plaintiff, who is a practicing advocate at Faridabad.

I have heard the learned counsel for the petitioner-defendant no.1 and appraised the paper book.

Article 57 of the Limitation Act emphatically relied upon by Mr. Jain, reads as under:-

57. To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Three years	When the alleged adoption becomes known to the plaintiff.
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On perusal of simple and plain language of the aforementioned provisions, it reveals that limitation is three years for the purpose of challenging any adoption deed when it came to the knowledge of the plaintiff. The copy of the plaint has been annexed as Annexure P-1. The jamabandi relied upon by the petitioner has not been pleaded in the plaint, much less in the previous plaint which would be subject matter of evidence as the previous judgments are admissible, in view of the provisions of Section 33 of Indian Evidence Act.

It is settled law that for the purpose of rejection of the plaint, only averments made in the plaint have to be seen.

Para Nos.4 and 5 of the plaint which have been noticed by the trial Court, in my view, do not, *prima facie* make out a case of rejection of the plaint that suit was barred by law of limitation. I am of the view that before the trial Court proceed further on merits, all the issues on which the parties will be pressing for, as per the pleadings, in my view, issue of limitation can be tried as a preliminary.

It has been brought to the notice of the Court that issues are yet to be framed. As and when issues are framed including the issue of limitation, I am of the view that same can be tried as a preliminary issue by affording 3-3 effective opportunities to the parties to lead evidence as to question whether the suit was out or within the purview of Article 57 of the Limitation Act.

With the aforementioned observations, the orders under challenge are upheld and the revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

February 09, 2018
savita

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