

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

**Civil Revision No.8007 of 2014 (O&M)
Date of Decision:28.08.2018**

**Krishan Kumar and others Petitioners
Vs
Naveen Kumar and others Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Ashish Gupta, Advocate
for the petitioners.

Mr. Mohit Setia, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

CM No.26284-CII of 2014

Prayer made in this application is for bringing on record the legal heirs of deceased/petitioner No.3 Smt. Nanki Devi, who died on 13.06.2013.

For the reasons mentioned in the application, the same is allowed and the legal heirs of deceased Smt. Nanki Devi as shown in para no.2 of the application are ordered to be brought on record, subject to all just exceptions.

CM No.26285-CII of 2014

Prayer made in this application is for bringing on record the legal heirs of deceased/respondent No.4 Sant Ram, who

died on 26.10.2014.

For the reasons mentioned in the application, the same is allowed and the legal heirs of deceased Sant Ram as shown in para no.2 of the application are ordered to be brought on record, subject to all just exceptions.

Civil Revision No.8007 of 2014 (O&M)

[1]. Petitioners have assailed the order dated 22.07.2014 passed by the Civil Judge (Jr. Divn.) Karnal vide which the application under Order 7 Rule 11 CPC filed by the defendants/petitioners was dismissed.

[2]. Brief facts of the case are that the plaintiffs filed a suit for declaration along with consequential relief of permanent injunction. Telu Ram was grandfather of the plaintiffs, defendants No.1, 2, 4 to 8, father of defendant No.9. and father-in-law of defendant No.3. Telu Ram was recorded as owner in possession of 82 *Kanals* 18 *Marlas* of land. Plaintiffs asserted that the land in the hands of Telu Ram was ancestral and the plaintiffs have got their right in the land by their birth. Telu Ram had no right to transfer the said land in any manner being *Karta* of joint Hindu family. Telu Ram during his life time distributed the land between his three sons namely Sant Ram, Hari Ram and Karam Chand in equal shares in the family settlement and thereafter sons of Telu Ram started cultivating the land to the

extent of their shares. Father of the plaintiffs was an illiterate person, whereas other brothers of Sant Ram namely Hari Ram and Karam Chand were clever persons. They got succeeded in obtaining Will dated 09.01.1990 from Telu Ram in their names under due pressure and unsoundness of mind of Telu Ram. On the basis of said Will, they got the mutation No.2673 sanctioned in their favour on 11.03.1996. Telu Ram died on 15.07.1990. Sant Ram filed a suit for declaration and consequential relief of permanent injunction for declaration as owner to the extent of 1/3rd share in the land belonging to Telu Ram, but Hari Ram and Karam Chand by taking benefit of illiteracy of Sant Ram got the matter compromised by giving him less share in the ancestral property. During pendency of that suit Sant Ram even filed an application for correction of *khasra girdawari* wherein it was found that father of the plaintiff was in possession of land. Khasra girdawari was corrected in the name of the plaintiff vide order dated 02.04.1999.

[3]. It was further pleaded that Property in the name of Telu Ram was claimed to be ancestral wherein father of the plaintiffs was having 1/3rd share in whole of the property. The Will was assailed to be illegal, null and void and not binding upon the rights of the plaintiffs. In the suit the compromise arrived at between the father of the plaintiffs and predecessor-in-interests

of defendant Nos.1 to 8 i.e. Hari Ram and Karam Chand was challenged, though the same was not binding upon the legal rights of the plaintiffs.

[4]. Defendants filed an application under Order 7 Rule 11 CPC for rejection of the plaint. The rejection of plaint was sought on the ground of maintainability of the suit as the plaintiffs had no cause of action to file the suit as well as on the ground of limitation.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. Cause of action depends upon bundle of facts. Non-maintainability of suit cannot be entertain under the scope of Order 7 Rule 11 CPC. The challenge to the compromise on the ground of minority, even if held to be not maintainable, but still the grounds of non-maintainability and limitation cannot be raked up as both are dependent upon leading of evidence by the parties at the relevant stage. For invoking provision in terms of Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. The scope of the compromise in the previous litigation is dependent upon proving the pleadings of earlier suit where the compromise was effected between the parties. On the basis of pleadings on record, it cannot be held at this stage

that the plaint is manifestly vexatious and meritless.

[7]. Careful perusal of the averments made in the plaint would not give rise to any such prima facie conclusion that the pleadings are manifestly vexatious and baseless. In my considered opinion the case does not fall under the ambit of Order 7 Rule 11 CPC on the basis of wanting cause of action and plea of limitation.

[8]. In view of aforesaid, the jurisdiction exercised by the trial Court cannot be held to be suffered with any illegality and perversity. This revision petition is accordingly dismissed.

[9]. Nothing expressed hereinabove shall be construed to be an opinion on ultimate merits of the case. The facts have been recorded only for the purpose of deciding the application under Order 7 Rule 11 CPC.

August 28, 2018

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No