

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

CR-7890-2018

Date of Decision: 21.11.2018

Adarsh and another

.... Petitioners

Versus

Virender Kumar and others

... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present:- Mr.M.K.Sood, Advocate
for the petitioners.

AVNEESH JHINGAN, J. (Oral)

This civil revision petition has been filed under Article 227 of the Constitution of India seeking quashing of order dated 22.10.2018 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.), Faridabad (hereinafter referred to as 'the trial Court'), dismissing the application of the petitioners filed under Order VII Rule 11 of the Civil Procedure Code, 1908 (for brevity, 'CPC').

The respondents/plaintiffs filed a suit for partition along with consequential relief of permanent injunction. There was dispute between the petitioners and the respondents, hence, the suit for partition was filed. During the pendency of the suit, an application under Order VII Rule 11 of CPC was filed. The issues raised in the application were that firstly there was no cause of action for the plaintiffs/respondents to file the suit and secondly, the suit was barred by limitation and lastly, no site plan was attached.

The trial Court, after hearing the parties and considering the facts, dismissed the application. Aggrieved of the dismissal, the present

revision petition has been filed.

Learned counsel for the petitioners argued that the trial Court erred in dismissing the application. The suit deserves rejection as there was no cause of action for the plaintiffs to file suit. The suit was barred by limitation as the land in question had come to the ancestors of the plaintiffs and defendants in 1974. Further, no site plan was attached with the suit.

The contentions raised by learned counsel for the petitioners lacks merit. Order VII Rule 11 of CPC requires that the plaint shall be rejected where it does not disclose the cause of action.

Order VII Rule 11 of CPC is reproduced as under:-

11. Rejection of plaint.— *The plaint shall be rejected in the following cases:—*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9:*

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying

the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

From the language of the provision itself, it is clear that the contents of the plaint are to be seen, whether any cause of action has been disclosed or not. The contention raised by the petitioners/defendants was based on the averments made in the written statement, the same cannot be a ground for rejection of the suit.

The second contention raised that the suit is barred by limitation itself cannot be a ground for allowing the application under Order VII Rule 11 of CPC. The law is well settled that the question of limitation is a mixed question of fact and law. It is only after adducing evidence that the said issue can be decided.

Lastly, the contention raised that no site plan was attached with the suit cannot be accepted for purpose of summary rejection of the suit. The issue regarding partition is to be decided after adducing evidence by the parties. The requirement of filing site map or scale showing specific plot is only in case where the plaintiff had filed partition of a specific plot. The present plaint was for partition of entire property.

No interference is called for in the impugned order passed by the trial Court.

Civil Revision Petition is dismissed accordingly.

21.11.2018
anju

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No