

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8124 of 2017(O&M)
Date of Decision-25.09.2018

Pardeep Kumar ... Petitioner
Versus
Nardeep Kumar ... Respondent

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

Present: Mr. R.S. Randhawa, Advocate
for the petitioner.

Mr. M.K. Sood, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 13.07.2017 passed by Civil Judge (Junior Division), Faridabad, vide which application under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

[2]. Plaintiff/respondent filed a suit for declaration with consequential relief of mandatory injunction and permanent injunction. The pleadings made in the plaint in terms of para Nos.3 and 8 are to the following effect:-

“3. That after purchasing the plot the plaintiff has constructed a double storey house on the plot No.1406 from 1980 to 1984 and an amount of Rs.3,10,711/- (approximate cost) was born by the plaintiff. The plaintiff has paid more than Rs.5,00,000/- to purchase and construct the house No.1406, Sector-16, Faridabad including other miscellaneous expenses. The defendant has not paid a

single penny to purchase the plot and to construct the house in question till today. Original booking receipt dated 15.04.1979 for Rs.1,000/-, original full payment receipt dated 25.04.1979 for Rs.14,000/-, approximate construction cost worth RS.3,10,711/- during the period of 1980 to 1984 are attached herewith an Annexue P-1 to P-3.

8. That when the defendant failed to get the conveyance deed only in his favour then the son of the plaintiff namely Rohit in collusion with the defendant with a mala fide and dishonest intention had filed a suit No.153 of 2007 for declaration titled as Rohit Kumar Vs. Nardeep Kumar and others to challenge the judgment and decree dated 17.12.1994 on the ground that Nardeep Kumar (present plaintiff) has not paid any amount to purchase the plot and to construct the house in question and all funds was born by Rohit Kumar, Pardeep Kumar (present defendant), mother of the Rohit Kumar and his sister. The defendant was also one of the defendant in that case, but the defendant after filing the written statement did not appear before that Court and he was proceeded ex parte on 22.04.2011. During the proceeding of suit Pardeep Kumar has not filed any application to set aside the ex parte order dated 22.04.2011 because Pardeep Kumar wants that the suit of his son may be decreed and the judgment and decree dated 17.12.1994 may be got cancelled and he may be declared as full owner of house in question.”

[3]. Defendant/petitioner filed an application under Order 7 Rule 11 CPC for rejection of plaint primarily on the ground of limitation. Defendant/petitioner has claimed that the suit is hopelessly time barred because according to the own case of the

plaintiff, a decree was passed on 17.12.1994 with the consent of the plaintiff.

[4]. Perusal of the entire plaint would give rise to triable issues and the plea of limitation in such situation would be a mixed question of law and facts which can only be gone into at the relevant stage. The plea of limitation in terms of Section 3 of the Limitation Act can be appreciated only in case of unequivocal stand of the plaintiff in the plaint. Perusal of the entire plaint would further show that the plea of limitation is dependent upon contingent plea and stand taken by the plaintiff. The same would be decided by the trial Court only after appreciation of evidence to be led by the parties. The cause of action is also dependent upon bundle of facts. The limitation cannot be treated to be pure question of law, rather the same becomes mixed question of law. As per reading of the plaint and the cause of action if found to be dependent upon the bundle of facts. The rejection of plaint is a drastic exercise at the preliminary stage of the suit and the same has to be exercised with great care and caution.

[5]. The ratio laid down in **C. Natrajan Vs. Ashim Bai and another, 2007(4) RCR (Civil) 736** is dependent upon the facts of the said case. Even as per ratio of that judgment, the question as to whether the suit is barred by limitation or not would be dependent upon facts and circumstances of each case. Only averments made in the plaint are to be seen. The pleadings in the

present suit would show that triable issues are involved which require evidence to be led by the parties.

[6]. A suit for declaration and permanent injunction was filed by Rohit Kumar against Nardeep Kumar and Pardeep Kumar. Reference of said suit was given in para No.8 of the plaint. The pleadings and outcome of that suit would be tested by the trial Court at the relevant stage after proving the pleadings in accordance with law. The filing of suit by Rohit Kumar who is son of Pardeep Kumar defendant, would make the entire case triable as pleadings in the suit titled Rohit Kumar Vs. Nardeep Kumar and others would show that Pardeep Kumar was pleaded to be ostensible owner in the property in question. Rohit Kumar and Pardeep Kumar were claimed to be members of HUF and the property was purchased by them jointly with joint family funds in the name of Pardeep Kumar. The reference of Civil Court decree dated 17.12.1994 was also made in the pleadings of the said suit and judgment and decree dated 17.12.1994 was claimed to be collusive.

[7]. In order to appreciate the present suit, the pleadings of civil suit, the reference of which has been given in para No.8 of the plaint has to be evaluated and the same can only be done after production of pleadings of said suit during course of evidence.

[8]. Perusal of the plaint in entirety would give rise to triable issues which would require evidence to be led by the parties. The question of limitation if ultimately found in favour of the plaintiff, the suit can be decided accordingly at the relevant stage. At the stage of appreciation of application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. Trial Court appears to have appreciated the averments in the plaint and has exercised the jurisdiction in a lawful manner.

[9]. In view of above, there is no error of jurisdiction in the impugned order dated 13.07.2017 passed by Civil Judge (Junior Division), Faridabad. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

25.09.2018
Prince

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