

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.977 of 2015 (O&M)
Date of Decision: December 19, 2018

Deepak Kumar & another

...Petitioners

Versus

Tilak Raj

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vinay Pandey, Advocate for
Mr.Deepak Arora, Advocate,
for the petitioners.

Mr. Sherry K. Singla, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The only point involved in the present case is whether the suit filed by the respondent-plaintiff claiming following relief can be rejected on the application filed by the petitioner-defendants for rejection of the plaint:-

“Suit for declaration to the effect that alleged sale deed bearing Vasika Number 1476 dated 04.11.1959 allegedly executed by plaintiff in favour of Bimla Devi mother of defendants of shop in dispute bounded as East:-Shop of Madarassa, North:-House of Partap Singh, South:-Old Lohtia Bazar situated near Purana Lohtia Bazaar Malerkotla duly shown in the site plan Mark X attached with the plaint is null and void, and is the result of fraud and is liable to be set aside and has no effect to the rights of plaintiff and

B) Suit for possession of shop in dispute fully detailed in headnote A of plaint.

C) Suit for issuance of permanent prohibitory injunction

restraining the defendants from alienating shop in dispute by way of sale, lease or any other method to any person and also from changing the nature of shop illegally, forcibly, without due course of law or any other relief.”

Mr. Vinay Pandey, Advocate for Mr. Deepak Arora, learned counsel for the petitioner-defendants submitted that respondent-plaintiff had challenged the sale deed dated 04.11.1959 allegedly executed by him in favour of Bimla Devi as a result of fraud as the possession sought in the year 2012 was *ex-facie* barred by law and, therefore, the provisions of Rule 11 of Order 7 CPC were attracted and the trial court has erroneously dismissed the application treating it the case of mixed question of law.

Mr. Sherry K. Singla, learned counsel for the respondent-plaintiff submitted that the objection qua limitation is a mixed question of law and can always be decided after framing of issues. There is no limitation to challenge the judgment and decree actuated out of fraud and as well as inheritance and, thus, urged this court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioners.

From the perusal of the relief claimed in the plaint, it reveals that the sale deed was not annulled only on simpliciter ground but on element of fraud as well. In such situation, suit cannot be decided summarily in the manner and mode as expressed. The application under Order 7 Rule 11 CPC is not to be decided on the basis of the purported or already filed defence, but simply on the averment of plaint. If at all, the defendants have some grievance, they could have pressed for framing of the

issue as preliminary but cannot seek its rejection. In case the parties lead evidence in the aforementioned suit, it would be in the fitness of the court to adjudicate the controversy in a most pragmatic manner.

For the reasons mentioned above, no ground for interference is made out in the impugned order. Resultantly, revision petition stands dismissed.

December 19, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No