

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

CR No.7282 of 2018

Date of Decision : 17.01.2019

Daljit Singh

.....Petitioner

Versus

Bhupinder Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Rajinder Singla, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

1. This revision is directed against the order passed by the Ld. Civil Judge (Junior Division), Ludhiana in CS No.4902/17 on 9th July, 2018.

2. Vide the impugned order an application filed on behalf of the petitioner-defendant under order 7 Rule 11 read with Section 151 of the Civil Procedure Code (for short, 'the CPC') seeking rejection of the plaint was dismissed by the Ld. Court below. The relevant grounds urged in the said application, a copy of which is on record as Annexure P-2, are set out as below :-

“3. *The plaint is hopelessly barred by limitation.*

4. *The plaint filed by the plaintiff does not disclose any cause of action.*

5. *That the plaintiff has not affixed proper Court Fees on the plaint as per the law and the present case*

liable to be dismissed as per the provisions of the Order 7 Rule 11 C.P.C.

6. *That the claim of plaintiff on the property is baseless and the said case is only filed to harass the defendant and is abuse of law process.*

7. *The plaintiff has concealed material facts of the case.*

8. *That, question whether Bhupinder Singh is Legal Representative/Legal Heir of Dalip Singh son of Santa Singh is pending for adjudication before the Hon'ble Punjab and Haryana High Court, in Regular Second Appeal Bearing number RSA-2146-1994 and in CMs No.5531 to 5533-C. Relevant Zimmni orders are annexed herewith. ”*

3. The Ld. Civil Judge in his impugned order has held that the plaint as filed discloses a valid cause of action. It may be mentioned that in Para No.6 of the plaint filed on behalf of the respondent (Annexure P-1), it was specified that the plaintiff learnt about the allegedly forged Will in favour of the petitioner in the month of May, 2015 and requested him not to rely upon the same to which the petitioner-defendant did not agree, and that lastly the petitioner had refused to admit the respondent's genuine request for that purpose in November, 2017.

4. In such circumstance, it cannot be said that the plaint *per se* disclosed no cause of action although admittedly veracity of the averments mentioned in the said Para No.6 is a matter of trial.

5. Further, considering that the suit was filed in the year 2018,

it cannot be held as being barred by limitation outright considering the last date of cause of action as mentioned therein.

6. The Ld. Civil Judge was also of the view that the plaint was duly stamped. It may be mentioned that the suit was for a declaration simpliciter to the effect that the alleged Will bearing Vasika No.614 dated 27th September, 1982 relied upon by the petitioner-defendant is null and void, on which relief of valuation was assessed at Rs.500/- and the requisite fee thereon was filed along with plaint.

7. The last ground raised on behalf of the petitioner was that an RSA bearing No.2146 of 1994 virtually on the same subject matter was already pending in this Court. In this regard, even assuming that the subject matter involved in Regular Second Appeal is actually identical with that in the suit pending before the Ld. Court below, rejection of plaint outright under Order 7 Rule 11 of the CPC was not called for. At best, a situation for stay of the suit under Section 10 of the Code of Civil Procedure, might have been applicable, but it was never sought for by the petitioner.

8. To sum up therefore, this Court finds no illegality or impropriety in the impugned order passed by the Ld. Court below. The revision is therefore dismissed.

January 17, 2019

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No