

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

CR-7627-2017(O&M)

Date of decision:-22.8.2019

Smt.Prem Kumari and another

...Petitioners

Versus

Smt.Raj Kumari

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Santosh Sharma, Advocate
for the petitioners.

Mr.R.K. Gupta, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Smt.Raj Kumari wife of Sh.Bhagat Singh, resident of Hisar had brought a suit against her real sister Smt.Prem Kumari and Ms.Alka Chaudhary, daughter of Smt.Prem Kumari on the assertions that she is owner in possession of land to the extent of 160/1420 share in the total land measuring 212 kanals 18 marlas situated at village Nalwa, Tehsil and District Hisar as per jamabandi for the year 2003-04 and a plot bearing No.352 measuring 350 square yards situated at Sector 14, Faridabad; that

she had not sold that plot to anybody, however, in the month of April, 2008, the plaintiff came to know that the plot in question had been got transferred by her sister Smt.Prem Kumari – defendant No.1 in favour of her daughter Ms.Alka Chaudhary – defendant No.2; the plaintiff made inquiries from HUDA confirmed the alleged transfer vide letter dated 22.5.2008; it transpired that a fraudulent transaction had been done by the defendants on the basis of some false, forged and fabricated general power of attorney allegedly executed and registered on 3.5.2005 with Sub-Registrar, Vijay Raghavgarh, District Jabalpur (Madhya Pradesh); that the alleged general power of attorney was purportedly executed by the plaintiff in favour of defendant No.1, when as a matter of fact the plaintiff had not done so; that the plaintiff lodged an FIR with regard to said matter; that the plaintiff had never appointed the defendant No.1 as her general attorney and had not received any sale consideration amount from either of the defendants, therefore, the general power of attorney and sale deed as well as the transfer permission are illegal, null and void; that when the defendants refused to accede to the request of the plaintiff to cancel those documents, the plaintiff brought the suit in question seeking a declaration that alleged general power of attorney bearing document No.A-4/321 dated 3.5.2005, shown to be registered in the office of Sub-Registrar, Vijay Raghavgarh, District Jabalpur (Madhya Pradesh) and sale deed bearing document No.14887 dated 29.12.2005 registered in the office of Sub-Registrar, Faridabad and the transfer permission No.43800 dated 28.12.2005 issued by HUDA, Faridabad are illegal, void and not binding upon rights, title or interest of any kind of the plaintiff and the

plaintiff is absolute owner and in possession of plot No.352 having area of 350 square yards, Sector 14, Faridabad; in addition to that, the plaintiff craved for grant of a decree for permanent injunction restraining the defendants from creating third party interest in the suit property or alienating the same in any manner; besides seeking a decree for mandatory injunction directing the defendants to hand over the original documents pertaining to the suit property to her. The suit was filed by the plaintiff before Civil Judge(Sr.Divn.), Hisar, which was assigned to Additional Civil Judge (Sr.Divn.), Hisar.

On getting notice, both the defendants had appeared and moved an application under Order 7 Rule 10 CPC for return of the plaint for the reason that Civil Court at Hisar did not have territorial jurisdiction in respect of plot No.352, Sector 14, Faridabad, therefore the plaint was liable to be returned to the plaintiff for presentation of the same in Civil Court at Faridabad and that plaintiff had included the land at village Nalwa, Tehsil and District Hisar in the plaint simply to create the jurisdiction of Civil Court at Hisar, otherwise there was no dispute between the parties to the suit with regard to the land at village Nalwa; the defendants had never raised any question regarding the title of the plaintiff in respect of land situated at village Nalwa and they do not claim any right or interest therein; that the land at village Nalwa is owned by the husband of the plaintiff, who is not a party to the suit, therefore Court at Hisar could not entertain and try the suit and plaint was liable to be returned to the plaintiff for presentation to Civil Court, Faridabad, where the plot in question is situated.

The plaintiff resisted the application contending that she is owner in possession of the land situated at village Nalwa, District Hisar on the basis of decree passed by Permanent Lok Adalat, Hisar, which fact is well within the knowledge of applicants/defendants and they had moved a wrong application and they just want to grab the property of the plaintiff on the basis of forged documents and further Court at Hisar had jurisdiction to entertain and try the suit. The plaintiff prayed for dismissal of the application.

The Court of Additional Civil Judge (Sr.Divn.), Hisar vide a detailed order dated 4.11.2009 came to the conclusion that the Civil Court at Hisar did not have territorial jurisdiction to entertain and try the suit, therefore the plaint was ordered to be returned to the plaintiff for presentation to the Court at Faridabad.

The plaintiff felt aggrieved by the said order and challenged it by way of filing an appeal before District Judge, Hisar. However, during pendency of the appeal, learned counsel for the appellant/plaintiff made a statement withdrawing the appeal with a prayer that plaint be ordered to be returned to the appellant for presentation to the Court at Faridabad and appeal be dismissed as withdrawn. Accordingly, the appeal was dismissed as withdrawn by District Judge, Hisar vide order dated 6.2.2012.

Thereafter, the plaint was presented before Civil Judge(Sr.Divn.), Faridabad. On being put to notice, the defendants had appeared and moved an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground of limitation. The trial Court vide order dated 30.1.2015 accepted the application observing that plaint had

been filed beyond the period of limitation, as such, the plaint was rejected. The plaintiff felt aggrieved by that order and challenged it before learned District Judge, Faridabad by way of filing of an appeal, which was assigned to Additional District Judge, Faridabad, who vide a detailed order dated 21.10.2017 accepted the appeal, set aside the impugned order passed by the trial Court and remanded the case back to the trial Court with a direction to restore it at its original number for recording further proceedings as per law.

The defendants felt aggrieved by the said order and they have knocked at the door of this Court by way of filing a revision petition, notice of which was given to the respondent/plaintiff, who has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the present revision petition.

The trial Court had allowed application under Order 7 Rule 11 CPC filed by the defendants for rejection of the plaint in a wrong and arbitrary manner without due application of judicial mind. However, that wrong was set right by learned Additional District Judge, Faridabad by setting aside that order. Learned Additional District Judge, Faridabad has found appellant/plaintiff to be entitled to benefit of Section 14 of the Limitation Act for refiling of suit at Faridabad with respect to her property situated at Faridabad observing that since defendant No.1 had transferred the property belonging to the plaintiff situated at Faridabad in favour of defendant No.2 on the basis of forged general power of attorney, there

was genuine apprehension in mind of the plaintiff that similar fraud may not be played with her with regard to her property situated at village Nalwa, District Hisar and for that reason, she had filed a suit in the Court at Hisar. Though in view of stand taken by the defendants that they had no right or interest therein, the trial Court at Hisar had directed return of plaint for presentation before Court of competent jurisdiction at Faridabad. As such the period during which the plaintiff was prosecuting the proceedings before the trial Court as well as in appeal before District Judge, Hisar could be excluded while commuting the period of limitation granting benefit to the plaintiff under Section 14 of the Limitation Act. Learned Additional District Judge, Faridabad has noted the contention of counsel for the appellant/plaintiff that even if benefit to deduct the period in conducting the appeal at Hisar i.e. from 4.11.2009, the date of passing of the order by learned Civil Judge, Hisar to 6.2.2012, the date of passing of the order by learned ADJ, Hisar is not subtracted, in that case also the suit refiled before learned Civil Judge at Faridabad is within the period of limitation. The conclusions drawn by learned Additional District Judge, Faridabad in paras No.12 to 15 are proper and appropriate and are being reproduced as under for the purpose of clarity and better understanding:

12. After hearing the rival submissions, I have given my thoughtful consideration to the same. The fact regarding commission of fraud for executing false sale deed by defendant no.1 in favour of defendant no.2, came to the light of appellant-plaintiff in the month of April, 2008, and the said fact was got confirmed when she obtained the documents regarding transfer of plot from the office of

HUDA on 22.05.2008. Thus, 22.05.2008 is the date when this fact came to the knowledge of appellantplaintiff as confirmed and accordingly, period of limitation might have expired on 22.05.2011 during the ordinary course. However, plaintiff filed the suit before learned Civil Judge, Hissar on 13.10.2008 and the order to return the plaint was passed on 04.11.2009 i.e. one year twenty two days were consumed while pursuing the proceedings before learned Civil Judge at Hissar. Even if the period consumed in pursuing the appeal at Hissar is not added for giving the benefit u/s 14 of the Limitation Act, even then by adding one year and twenty two days to 22.05.2011, the last date to re-file the suit at Faridabad comes to as 13.06.2012. However, lower court record shows that suit was re-filed on 11.04.2012 i.e. well before the period of expiry of period of limitation, after giving the benefit under Section 14 of the Limitation Act.

13. During the arguments, learned counsel for respondents-defendants also took the plea that ground for extension of limitation needs to be specifically pleaded in the pleadings, without which plaintiff cannot claim benefit of limitation u/s 14 of the Act. On the other hand, learned counsel for appellant-plaintiff submitted that he has specifically mentioned the delay in filing the suit at Faridabad alongwith the previous plaint and orders, and moreover, he also wants to amend his pleadings as per his application filed under Order 6 Rule 17 of CPC to clarify position on period of limitation.

14. I am fully convinced with the submissions made by learned counsel for the appellant-plaintiff in this regard. The amendment by way of clarification to show that the suit is within limitation can be allowed at any stage, as it does not amount to material amendment in pleadings to effect the defence of the opposite party. I fortify my view in the light of judgments of Hon'ble Punjab & Haryana High Court in case **Sadhu Singh Versus Balbir Kaur and others 2013(4) Civil Court Cases 474**, and in case **Baljeet Singh v. Ajit Singh, 2014 (2) CCC 67 (P&H)**. Similar view is expressed by Hon'ble Madras High Court in case **I.Narayan Reddy Versus P. Narayan Reddy and others AIR 2005, Madras 66**.

15. In sequel to my above discussion, the present civil appeal is hereby allowed, with liberty to file amended plaint clarifying that the suit is within the period of limitation. Case is remanded back to the lower court with direction to restore the same at its original number, for recording the further proceedings as per law. Both the parties are directed to appear before the said court on 8.11.2017. LCR alongwith copy of this judgment be returned. Appeal file be consigned to record room.

Learned counsel for the petitioners referred to authorities **Ramji Pandey and others Versus Swaran Kali, 2011(3) RCR(Civil)624**, **L.Narayan Reddy Versus P. Narayan Reddy, 2004(4) RCR(Civil) 341**, **Sadhu Singh Versus Balvir Kaur and ors., 2014(9) RCR(Civil)2989** and **Sardar Singh Versus Jaswinder Singh and another, 2010(34) RCR(Civil) 10**. However, those do not find application to the present case

due to different facts and circumstances and the context in which such observations had been made.

Learned counsel for the respondent/plaintiff has referred to judgments *Gopi Das Mimani and Ors Versus Smt.Monika Daw and Ors., 2017(4) ICC 616, M/s Consolidated Engg. Enterprises Versus Principal Secy, Irrigation Deptt. And others, 2008(2) RCR(Civil)897.*

Under the circumstances of the case, the limitation was a mixed question of law and facts and plaintiff deserves to be given an opportunity to explain and bring evidence to show that suit filed by her is within period of limitation. Furthermore, keeping in view the facts of the case rejection of plaint for the reason the suit had been refiled after expiry of period of limitation was totally uncalled for.

I find that the impugned order passed by learned Additional District Judge, Faridabad is well reasoned, which does not suffer from any illegality or infirmity and no interference therewith is called for while exercising revisional jurisdiction.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

22.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No