

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

**SAO No. 79 of 2014 (O&M)
Date of Decision: April 02, 2019**

Harpal Singh and another

.....APPELLANTS

VERSUS

Charan Singh and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arhiant Jain, Advocate
for the appellants.

Mr. Vishal Munjal, Advocate
for respondents No. 1 to 3.

SURINDER GUPTA, J.(Oral)

Heard.

The plaintiffs filed suit challenging the judgment and decree dated 11.11.1991 passed by learned Additional Senior Sub Judge, Sunam and consequent mutation entry in the revenue record. They had also taken a plea that power of attorney on behalf of plaintiff No. 1 was produced by defendant No. 2 without signature of any advocate and without any knowledge and consent of plaintiff.

In the suit, defendants moved an application under Order 7 Rule 11 CPC for rejection of the plaint which was allowed primarily on two grounds that Pritam Singh father of plaintiff no. 1 was party to the suit in which decree dated 11.11.1991 was filed but he never challenged the same during his lifetime, secondly the plaintiffs were aware of the said judgment

and decree from the very first day. They had also acted upon the judgment and decree by selling their shares and mortgaging it with bank for taking loan. It was also observed that the suit is barred by limitation.

Against the order of the learned Civil Judge, Jr. Division, Sunam, appeal was filed by plaintiffs which was accepted by Additional District Judge, Sangrur with the observations that the provisions of Order 7 Rule 11 CPC are not applicable, the plaint could not be rejected on the point of limitation.

Learned counsel for the appellant has argued that the decree was passed in the year 1991, which was challenged by plaintiffs/respondents in the suit filed in the year 2012. After passing of decree they have even mortgaged their share with the bank to raise a loan and some sale transactions were also made. The decree dated 11.11.1991 was a compromise decree and Pritam Singh father of plaintiff No. 1 was also party to that suit. Charan Singh was also party and had relinquished his share in the suit property. The filing of suit after about 21 or 22 years of passing of decree was sheer misuse of process of Court. They have not even properly valued the suit and paid required court fee. They have not mentioned any cause of action which gives rise to filing a suit.

Learned counsel for plaintiffs-respondents has argued that limitation is mixed question of law and facts. The plaintiffs have alleged fraud, as such, no limitation is attracted in this case. The specific plea was taken that power of attorney not having signature of any advocate was produced on behalf of plaintiff no. 1. Without giving opportunity to the plaintiffs/respondents to prove their plea trial Court had dismissed the suit

under Order 7 Rule 11 CPC, which is not attracted in this case.

The plaint was rejected under Order 7 Rule 11 CPC, which is reads as follows.

“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 under-valued, and the plaintiff, on being required by the court to so correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) whether the relief claimed is properly valued, but the plaint is written 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.*

So far as the question of limitation is concerned, it is mixed question of law and facts and could not be decided on application under Order 7 Rule 11 CPC. The plaintiffs/respondents have raised the plea of fraud and it was for the trial Court to ascertain as to whether there is any substance in their plea and the suit is within limitation as per the evidence on record. The plaintiffs have alleged that the statement recorded in Court was not signed by plaintiff No. 1 and statement of Pritam Singh was counter signed by counsel for opposite party and not by counsel who appeared for him. The power of attorney placed on file on behalf of plaintiffs was also not bearing the signature of any advocate. He came to know of all these

facts in the year 2011 giving him cause of action to file the suit. Again this is a fact to be seen by the Courts below on the basis of evidence as to whether the plaintiffs had cause of action to file the suit.

So far as the question of paying the Court fee is concerned learned Civil Judge has not commented on this fact and the matter is to be seen as and when the case is proceeded further.

Keeping in view the above facts, I find no legal infirmity in the order passed by Additional District & Sessions Judge, Sangrur, remanding the case before the trial Court for fresh decision in accordance with law.

This appeal has no merits.

Dismissed.

April 02, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***