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

CR No.7770 of 2019(O&M)
Date of Decision: 11.12.2019

Bachan Singh and another .....Petitioners

Versus

Anil Kumar @ Anil Grover .....Respondent

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

Present: Mr. Sanjeev Patiyal, Advocate
for the petitioners.

Mr. Deepak Jindal, Advocate
for the respondent.

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RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred against the order dated 03.07.2019 passed by Civil Judge (Junior Division), Chandigarh, vide which application filed by the petitioners under Order 7 Rule 11 CPC was dismissed.

[2]. Plaintiff filed a suit for redemption of mortgage, mandatory injunction, permanent injunction, declaration and recovery of damages against the defendants. Defendants sought dismissal of the suit on the ground that registration of mortgage is necessary when money is taken under usufructuary

mortgage is Rs.100/- or more. If the mortgage money is less than Rs.100/-, then registration is not required and delivery of possession is sufficient. If there is no mortgage of the property, question of redemption does not arise and the suit for redemption of mortgage is liable to be dismissed.

[3]. Petitioners sought to get the plaint rejected on the following grounds:-

> *I) That as per the version of the plaintiff in his legal notice dated 16.05.2017, the alleged mortgage of property i.e. SCR No.619, DMC, Chandigarh was oral in fact the property in question is not mortgaged property which has been purchased by defendant No1. Moreover, as per Section 58 of Transfer of Property Act "Registration is necessary when the money taken under usufructuary mortgage is Rs.100/- or more. Where the mortgage money is less than Rs.100/-, registration is not necessary, delivery of possession is sufficient". When there is no mortgage of the property as such question of its redemption does not arise, as such the suit for redemption of mortgage is liable to be dismissed.*
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> *II) That as per the version of plaint as mentioned in the plaint, the plaintiff took Rs.80,000/- as loan from the*

defendant No.1 in the year 1981 in fact the defendant No.1 purchased the said property for a sum of Rs.70,000/- vide agreement to sell dated 05.03.1982, GPA, Will, SPA duly executed by plaintiff in presence of marginal witnesses. Therefore, the deal has already been struck in the year 1982 i.e. 36 years back. Since then the defendant No.1 is in possession of the said property and the same was never objected by the plaintiff. In the year 2014, the plaintiff allegedly contacted the defendant No.1 and served a notice upon the answering defendant on 16.05.2017 on false and frivolous grounds, having mala fide intentions after a period of 35 years and has now filed the suit on false and frivolous grounds in order to mislead the Court by misrepresenting the facts in order to get favourable orders. As per Limitation Act, 1963, the present suit is highly time barred as more than 35 years have already been passed when the deal was struck between the plaintiff and defendant No.1 which was never objected by the plaintiff till 2017. This fact shows that the plaintiff having mala fide intentions filed the present suit as the prices of the properties in Chandigarh have been risen up many folds from the year 1982, as such the suit of *the plaintiff is also liable to be dismissed on the ground of limitation.*

III) That the relief claimed by the plaintiff for declaration is also highly time barred as the defendant No.1 is in possession of property in question since 1982 being owner as he has purchased the said property by paying consideration to the plaintiff and the physical possession of the said property was handed over to the defendant No.1 by the plaintiff after receiving the full and final sale consideration of Rs.70,000/- from the defendant No.1 in the year 1982 in the presence of marginal witnesses, as such the plaintiff is not entitled to any relief of declaration.

IV) That the relief of the plaintiff for recovery of damages is also not sustainable as the defendant No.1 is owner of the said property and has every right to use the said property of his own choice for his benefit, as such the suit for recovery of damages is liable to be dismissed. Hence the present application may be allowed and the suit filed by the plaintiff may be dismissed on ground of highly barred by limitation.

[4]. Plaintiff/respondent contested the application.

[5]. It is a settled principle of law that at the stage of

consideration of application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. The rival contentions raised by learned counsel for the parties can only be adjudicated after consideration of evidence to be led by the parties at an appropriate stage and no findings can be recorded at this stage. Whether the property was mortgaged by the plaintiff or the same was purchased by defendant No.1, would be adverted to by leading evidence. The issue of limitation in the given circumstances would be a mixed question of law and facts and the same has to be proved with reference to evidence.

[6]. For the reasons recorded hereinabove, I see no justification to interfere in the impugned order. This revision petition is accordingly dismissed.

11.12.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No