

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-524-2020(O&M)
Date of decision:16.03.2020

Kuldeep Singh @ Baljit Singh

.....Petitioner

Versus

Sunita Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Saurabh Bajaj, Advocate for the petitioner

ANIL KSHETARPAL, J.

The defendant No.1 has challenged the correctness of the order passed by learned Trial Court dismissing an application filed under Order 7 Rule 11 CPC for rejection of the plaint.

Respondent No.1 Sunita Devi filed a suit for declaration with a consequential relief of permanent injunction and joint possession. The plaintiff while filing the suit has claimed the following reliefs:-

“It is, therefore, prayed that a decree for declaration to the effect that impugned judgment and decree dated 13.3.1985 passed in civil suit no. 160/166 of 1985 titled Kuldeep Singh etc. Vs. Roop Chand by the court of Shri U.B.Khanduja, the then learned Addl. Senior Sub Judge Kurukshetra, regarding the land fully detailed in para no.3 to 5 of the plaint and also

mentioned in the impugned judgment and decree dated 13.3.1985, and also as per jamabandi for the year 1979-80, and mutation no.553 entered on the basis of the alleged judgment and decree as well as subsequent entries in the revenue record, as well as mutation no.576 dated 30.7.1988 passed by the Asst. Collector, 2nd Grade, on the basis of the alleged Will as well as alleged Will dated 24.7.1987 regarding the land detailed in para no.3 to 5 of the plaint and the subsequent entries in the revenue record, are illegal, null, void, fraudulent, inoperative, nonest and not binding on the rights of the plaintiff and performa defendants, with a Decree for permanent injunction restraining the defendants no.1 to 3 from alienating the suit land as mentioned in para no.3 to 5 of the plaint through any mode of transfer, forcibly or illegally or raising construction in any manner over the suit property and consequently, it be held that the plaintiff and defendants are owners in joint possession of the suit land fully detailed in para no.3 to 5 of the plaint, may kindly be passed in favour of the plaintiff and against the defendants no .1 to 3, with costs of the suit, in the interest of justice.

It is further prayed that Mam Chand may please be declared as civilly dead, as he has not been

heard by anybody since 23.2.1984, for which, Rapat No. 13, dated 1.3.1984 in Police Station, City Thanesar, stands recorded regarding missing of Mam Chand.

Any other relief to which the plaintiff and performa defendants are found entitled may also be granted in favour of the plaintiff and performa defendants, in the interest of justice.”

The plaintiff has pleaded that Raja Ram was the common ancestor of the parties who had two sons Roop Chand and Ramji Lal. Mam Chand is son of Roop Chand. Mam Chand is stated to be missing since 23.2.1984. Mam Chand has three sons and two daughters. Mam Chand also has sister Roshni Devi. As is clear from the prayer that challenge is the correctness/validity of decree dated 13.3.1985 passed by the Civil Court in a suit filed on 12.3.1985. Roop Chand is alleged to have suffered a decree, correctness/validity whereof has been challenged. Still further, the Will executed by Roop Chand dated 24.7.1987 is also claimed to be an oral Will. The defendant no.1 filed an application under Order 7 Rule 11 CPC with a prayer to reject the plaint on the ground that the suit is hopelessly time barred and the plaintiff has no right, title or interest in the property on the ground that such property is ancestral. Learned Trial Court dismissed the application.

This Court has heard learned counsel for the petitioner at length. Learned counsel has submitted that the suit filed by the plaintiff was not maintainable as it has been filed after a period of 28 years from

the date of decree and 26 years after the Will was executed. He further submitted that the plaintiff being daughter at that time could not claim any pre-existing right in the ancestral property.

This Court has considered the submissions of the learned counsel for the petitioner but find no substance therein. It may be noted here that under Order 7 Rule 11 CPC, the plaint can be rejected at the threshold only if the Court arrives at a conclusion that the suit as instituted cannot be allowed to continue. While exercising powers under Order 7 Rule 11 CPC pleadings in the plaint are required to be examined. The Court cannot look into the defence. In the present case, the defendant-petitioner has failed to fulfil the requirements of Order 7 Rule 11 CPC. Question of limitation is a mixed question of law and fact and therefore, its decision would depend upon the evidence to be led by the parties. As regards argument of learned counsel for the petitioner that the plaintiff has no right in the ancestral property, it may be noticed that the plaintiff has not based her claim on the ground that the property is ancestral but has also assailed the correctness of the alleged Will left by Roop Chand on 24.7.1987. She has also prayed for a decree of declaration that Mam Chand, her father be declared as civil dead as he has not been heard for the last 29 years. In such circumstances, this Court does not find that the plaint is liable to be rejected at the outset.

Keeping in view the aforesaid facts and without making any further observation, the revision petition filed by the petitioner is dismissed with liberty to the defendant-petitioner to defend the suit in accordance with law including the points argued by the learned counsel

for the petitioner in this petition.

16 .03.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No