

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 968 of 2019

Date of Decision: 21.01.2020

Gurbakshish Singh

... Petitioner(s)

Versus

Birjinder Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Gurbakshish Singh, Petitioner, in person.

Mr. Damanjit Singh Sandhu, Advocate
for respondent No.1.

Anil Kshetarpal, J.

Correctness of order passed by the learned Civil Judge (Junior Division), Moga dated 26.11.2018 has been challenged. Learned Civil Judge has dismissed an application under Order 7 Rule 11 (a) & (d) CPC for rejection of the plaint.

This Court has heard petitioner in person and learned counsel for the respondent and with their able assistance, has gone through the paper book.

The petitioner, who appeared in person, has submitted that this is a third suit filed by the plaintiff and hence, the present suit is barred under Order II Rule 2 CPC. He further submitted that present suit is time barred. On the other hand learned counsel appearing for the respondent No.1 has defended the order passed by the learned Civil Judge. He has submitted that under Order VII Rule 11 CPC, the plaint can be rejected only if the Court is certain about the fact, that the suit as filed is not maintainable. He, hence

submitted that the third suit which has been filed praying only for grant of

decree for permanent injunction restraining the defendants from collecting rent should not be dismissed at the threshold under Order VII Rule 11 CPC.

This Court has analysed the arguments of both the sides and finds that this is not a fit case for rejection of the plaint under Order VII Rule 11 CPC. The reasons are as under:

- i) Prayer in the suit is only to restrain defendants No.1 to 4 from collecting the rent/lease amounts.
- ii) The suit was instituted on 04.08.2014 and five years have elapsed. This Court does not find that with certainty, suit, at this stage, can be held to be time barred under the Limitation Act or in law. Application under Order VII Rule 11 CPC is expected to be filed at initial stage and the Court can allow the same only if it is certain of the fact that the plaint is liable to be rejected on the grounds mentioned in Order VII Rule 11 Clauses (a), (b), (c), (d), (e) & (f) CPC.

Now let us examine the contentions raised by the petitioner. First contention is concerning the suit is time barred. Normally, such question is mixed question of law and facts and, therefore, it would not be appropriate for the Court to decide the same at the stage of decision of the application under Order VII Rule 11 CPC. Still further, prayer made in the present suit is for an injunction and it has been pleaded that the cause of action in the end arose when the defendant finally refused. Hence, there is no substance in the first contention.

As regards the suit is barred under Order II rule 2 CPC, it will

be noticed that bar under order II Rule 2 CPC can be examined by the Court only when the parties have led evidence, proved the pleadings of the previous suit/suits. Still further bar under order II Rule 2 CPC is under Code of Civil Procedure. The bar as provided under Order VII Rule 11 CPC is with reference to absolute and substantive bar provided under a substantive law. As noticed above, bar under Order II Rule 2 CPC is subject to the evidence led to prove the pleadings. In such circumstances, at this stage, it would not be appropriate for the Court to hold that the subsequent suit is barred under Order II Rule 2 CPC.

No doubt, this is third suit filed by the plaintiff. The real dispute between the parties is with regard to validity of the Will, judgements and decrees passed by the Courts in the year 1970 and 2003. All the parties are claiming succession to the property left by their common ancestors.

In these circumstances, particularly keeping in view the fact that the suit filed is already pending for more than five and half years, this Court does not find any ground to interfere in the impugned order passed by the trial Court. As such, the present petition shall stand dismissed. However, the learned Civil Judge shall be entitled to independently decide the suit, including the objections which have been taken herein to the maintainability of the suit, without being influenced by the order impugned herein or dismissal of the revision petition.

(Anil Kshetarpal)
Judge

January 21, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No