HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Revision Petition No. 525/2011

Pawan Kumar S/o Shri Banarsilal, aged about 41 years, R/o 54 N Block, Sri Ganganagar.

----Petitioner

Versus

1. Dharamveer S/o Shri Laxmanram, R/o Chak 4 Z Tehsil and District Sri Ganganagar. At present residing at 572 Section 10 A Gurdgaon (Haryana).Through General Power of Attorney Holder Shri Ram Chandra S/o Sh. Badri Prasad, R/o 4 Z Tehsil and District Sri Ganganagar.
2. Tanmay S/o Sh. Saroj Kumar @ Rajesh Kumar, R/o Purani Abadi, Sri Ganganagar. Minor through natural guardian his mother Smt. Anita Saharan wife of Late Sh. Saroj Kumar @ Rajesh Kumar, R/o Purani Abadi, Sri Ganganagar.
3. Akshay S/o Shri Saroj Kumar @ Rajesh Kumar, R/o Purani Abadi, Sri Ganganagar. Minor through natural guardian his mother Smt. Anita Saharan wife of Late Sh. Saroj Kumar @ Rajesh Kumar, R/o Purani Abadi, Sri Ganganagar.
4. Lixmanram S/o Sh. Badri Prasad, R/o 4 Z Tehsil & District Sri Ganganagar. At present residing at Purani Abadi, Tehsil & District Sri Ganganagar.
5. Vijaipal S/o Sh. Murlidhar, R/o 192 Gali No.3, Indra Colony, Sri Ganganagar.
6. Ajaipal S/o Sh. Murlidhar, R/o 192 Gali No.3, Indra Colony, Sri Ganganagar.

----Respondent

Connected With

S.B. Civil Revision Petition No. 526/2011

Sunita Devi W/o Sh. Pawan Kumar, aged about 40 years, R/o 54 N Block, Sri Ganganagar.

----Petitioner

Versus

1. Dharamveer S/o Shri Laxmanram, R/o Chak 4 Z Tehsil and District Sri Ganganagar. At present residing at 572 Section 10 A Gurdgaon (Haryana).Through General Power of Attorney Holder Shri Ram Chandra S/o Sh. Badri Prasad, R/o 4 Z Tehsil and District Sri Ganganagar.
2. Tanmay S/o Sh. Saroj Kumar @ Rajesh Kumar, R/o Purani

Abadi, Sri Ganganagar. Minor through natural guardian his mother Smt. Anita Saharan wife of Late Sh. Saroj Kumar @ Rajesh Kumar, R/o Purani Abadi, Sri Ganganagar.

3. Akshay S/o Shri Saroj Kumar @ Rajesh Kumar, R/o Purani Abadi, Sri Ganganagar. Minor through natural guardian his mother Smt. Anita Saharan wife of Late Sh. Saroj Kumar @ Rajesh Kumar, R/o Purani Abadi, Sri Ganganagar.
4. Lixmanram S/o Sh. Badri Prasad, R/o 4 Z Tehsil & District Sri Ganganagar. At present residing at Purani Abadi, Tehsil & District Sri Ganganagar.
5. Vijaipal S/o Sh. Murlidhar, R/o 192 Gali No.3, Indra Colony, Sri Ganganagar.
6. Ajaipal S/o Sh. Murlidhar, R/o 192 Gali No.3, Indra Colony, Sri Ganganagar.

----Respondents

For Petitioner(s) : Mr. Aidan Choudhary for
Mr. Muktesh Maheshwari(through VC).

For Respondent(s) :

HON'BLE MR. JUSTICE ARUN BHANSALI

Order

03/12/2020

This revision petitions have been filed by the petitioners aggrieved against order dated 25.08.2011 passed by the trial court whereby, the applications filed by petitioners under Order VII Rule 11 CPC have been rejected.

The respondents - plaintiff filed a suit for cancellation of sale-deed dated 03.03.2006 and 20.01.2006 inter-alia with the submissions that the sale-deeds which were executed by Lixmanram in favour of the petitioner, pertains to the property, which was joint and, as there was no dissolution of the joint family and consequently, no partition of the property, the transfer made by defendant No.2 was bad in law. Several other averments were made in the plaint.

The averments made in the plaint were contested by the defendants.

During pendency of the suit, present applications under Order VII Rule 11 CPC were filed inter-alia with the submissions that the plaint does not disclose any cause of action and that the same was barred by limitation.

The trial court by its impugned order, after hearing the parties, came to the conclusion that as the plea raised pertains to the right of transferor to transfer the property, the plaintiff does have a cause of action and that the suits were within limitation and consequently, rejected the applications.

Feeling aggrieved, the present revision petitions have been filed.

It is submitted by learned counsel for the petitioners that the trial court was not justified in rejecting the applications filed by the petitioners, inasmuch as, the averments made in the plaints did not disclose any cause of action. Further, from the averments made in the application, the suit was on its face barred by limitation and, therefore, the application filed by the petitioner should have been accepted by the trial court. It was prayed that the application under Order VII Rule 11 CPC be allowed and the plaint be rejected.

An additional submission was also made that though the issue of jurisdiction of court being barred under provisions of Section 207 of Rajasthan Tenancy Act, 1955 (‘the Act of 1955’) was not raised, from the averments made in the plaints, the same are apparently barred under the provisions of the Act of 1955.

I have considered the submissions made and have perused the orders passed by the trial court.

Though the applications were under Order VII Rule 11 CPC, the trial court has taken pains to decide the said application in order running into 19 pages by discussing each aspect as raised by the petitioners and categorically coming to the conclusion about the disclosure of the cause of action and prima-facie the plaint being not barred by limitation.

Learned counsel for the petitioner attempted to make submissions regarding the suit being barred by limitation. Hon'ble Supreme Court in *Shakti Bhog Food Industries Ltd. V. The Central Bank of India and Ors.: AIR 2020 SC 2721* on the said aspect inter-alia laid down as under:-

> "13. It is well established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order VII Rule 11 of the Code of Civil Procedure is ruled out."

Besides the above, the plea sought to be raised on the said aspect of limitation is based on the application / written statement, which cannot be considered while deciding an application under Order VII Rule 11 CPC, which is required to be decided based on the plaint averments only.

In view thereof, insofar as, plea based on the suit being barred by limitation is concerned the trial court was justified in rejecting the application. The said aspect it raised in the written statement can always form subject matter of a separate issue to be decided, after parties lead evidence.

So far as the plea regarding the plaint not disclosing the cause of action is concerned, the averments as indicated in the

order impugned does make out a cause in favour of the plaintiffs and, therefore the plea raised in this regard also has no substance.

So far as the attempt made by learned counsel to make submissions regarding the suit being barred under Section 207 of the Act of 1955 is concerned, admittedly the said plea was not raised before the trial court and has not been raised in the revision petition also and, therefore, at this stage, there is no reason to consider the said additional issue raised, if the petitioners had a cause on the said ground, the same should have been raised before the trial court.

In view of the above discussion, no case for interference in the orders impugned is made out. The revision petitions have no substance. The same are, therefore, dismissed.

(ARUN BHANSALI),J

58-pradeep/-

RAJASTHAN HIGH COURT
सत्यमेव जयते