

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

204

CR No. 7096 of 2016 (O & M)

Date of decision : 16.9.2021

Satyawan

.....Petitioner

Vs.

Sunita

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. N.P. Bhardwaj, Advocate, for the petitioner

Mr. R.S. Redhu, Advocate, for the respondent

Rajbir Sehrawat, J. (Oral)

This petition has been filed for setting aside the order dated 8.9.2016 (Annexure P-1), passed by the District Judge, Jind; and the order dated 4.4.2015 (Annexure P-2), passed by the Civil Judge (Junior Division), Safidon, whereby the application filed by the respondent/defendant under Order 7 Rule 11 (d) CPC for rejecting the plaint on the ground of limitation, was allowed.

It is submitted by counsel for the petitioner that the Court below has gone wrong in law in allowing the application of the defendant/respondent while rejecting the plaint filed by the petitioner/plaintiff. Relying upon the judgment of the Hon'ble Supreme Court rendered in the case of '**Vaish Aggarwal Panchayat v. Inder Kumar and others; 2015 AIR (SC) 3357**', counsel for the petitioner has submitted that the issue of limitation is a mixed question of fact and law, therefore, the suit could not have been rejected on the ground of limitation while exercising powers under Order 7 Rule 11 CPC.

Referring to the pleadings in the plaint, counsel for the petitioner has submitted that although the petitioner has not disputed that the sale deed in question was executed on 29.9.2006, however, the petitioner has averred in the plaint that efforts were going on to get the sale deed cancelled; because the same was based on fraud and mis-representation. Ultimately, the defendant had refused to get the sale deed cancelled just one day prior to the filing of the suit. Hence, it is submitted by counsel for the petitioner that the intervening period has been duly explained by the petitioner in the averments in the plaint. Since there is an explanation for the intervening period, therefore, the trial Court could not have rejected the plaint by assuming that cause of action arose on 29.9.2006. Counsel for the petitioner has further submitted that, otherwise also, the issues have already been framed in the case on 26.5.2014 and only thereafter, power Under Order 7 Rule 11 CPC has been exercised by the trial Court. Once there are facts in issue, which go even to the root of maintainability of the suit, then the Court could not have travelled back and rejected the plaint by exercising powers under Order 7 Rule 11 CPC.

On the other hand, counsel for the respondent/defendant has submitted that the Court below has rightly rejected the plaint filed by the petitioner. Counsel has submitted that once the petitioner has not disputed the fact that he knew the execution of the sale deed from the day one; then there is no scope of extension of limitation in filing the suit for challenging the said sale deed. It is further submitted by counsel for the respondent that earlier the same sale deed was challenged by the son of the petitioner. Those proceedings travelled upto the Supreme Court and the son of the petitioner lost in that suit. The petitioner was also a party to that suit. Although he was proceeded ex-

parte at the stage of trial, however, he had put in appearance at the stage of appeal. Therefore, the petitioner had the knowledge of all these proceedings and therefore, the limitation in the present case would start running from the date of execution of the sale deed only. Hence, on the face of it the suit is barred by limitation. Therefore, the same has rightly been rejected under Order 7 Rule 11 CPC.

Having heard counsel for the parties, this Court finds substance in the arguments of counsel for the petitioner. It is not disputed that it is averred in the plaint that the sale deed was executed on 29.9.2006. Had the petitioner not averred anything further in the case, the limitation in the case would have started running from this date alone. However, the petitioner has averred in the plaint to give an explanation for not filing the suit earlier. The explanation given by the plaintiff/petitioner is that he was in discussion with the defendant to get the sale deed cancelled and that the defendant refused to accede to the demand of the petitioner, finally, only one day prior to the filing of the suit. It is possible that the plea taken by the plaintiff/petitioner is factually incorrect or the same may not be even sufficient to give the cause of action to the petitioner/plaintiff, however, that would be a question which can be decided during the trial only after taking evidence from the parties. Per se, the plaint does contain an explanation for not filing the suit before the date, it has been filed. Veracity of that explanation cannot be decided at the stage of deciding application under Order 7 Rule 11 CPC; because the issue of limitation is a mixed question of law and facts, as has been held by the Supreme Court in the case of **Vaish Aggarwal** (supra).

Although counsel for the respondent/defendant has also submitted

that the petitioner knew everything right from the day one and he was also aware of Court proceedings initiated by his son, however, even this argument cannot be taken at this stage. There is nothing of that kind disclosed in the plaint; as such. None of these facts is contained in the plaint. Again, the respondent/defendant may be right in raising this argument against the petitioner/plaintiff, however, the same can be done only during the trial, when the issue is to be considered on merits of the case after giving the parties opportunity to lead their respective evidence. Needless to say, that at the stage of exercising powers under Order 7 Rule 11 CPC, it is only the averments in the plaint which have to be taken on the face of it; without adverting to any possible defence of the defendant in the suit.

In view of the above, this Court finds that the order passed by the Court below cannot be sustained. Hence, the present petition is allowed. The impugned order is set aside. The suit is ordered to be restored to its original number and to be proceeded further, in accordance with law.

(RAJBIR SEHRAWAT)
JUDGE

16.9.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No