

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1787-2021

Date of Decision: 10.11.2021

Geeta Devi and others

....Petitioners

VS

Angoori Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rose Gupta, Advocate
for the petitioners

SUDHIR MITTAL, J. (Oral)

The plaintiff-respondent No. 1 has filed a suit for declaration that she and her son are entitled to the death-cum-retiral benefits payable to late Sh. Ram Kumar who was her lawfully wedded husband. Marriage was never dissolved by decree of divorce and, thus, payment of all the benefits to defendants No. 5 to 8 – petitioners could not be sustained. Reference has been made to an order passed by the competent Court under Section 125 Cr.P.C. whereby maintenance was awarded. It has been averred that maintenance amount was subsequently enhanced and was paid continuously. In 2015, she stopped receiving payment and upon enquiry she came to know that Ram Kumar had died. Thus, an application dated 06.05.2016 was made for payment of death-cum-retiral benefits but the same has been refused. Defendants No. 5, 7 and 8 filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground of limitation as well as non-affixation of *ad valorem Court fee*. The said application has been dismissed.

Learned counsel for the petitioners has submitted that the death-cum-retiral benefits payable can be quantified. Thus, the trial Court was in error in holding that *ad valorem Court fee* was not payable as amount of money claimed

was not quantified. Further, the death took place admittedly on 27.07.2015. The suit was filed on 17.07.2018 and, thus, it was patently barred by limitation. The finding that limitation is a mixed question of fact and law is also not sustainable.

I have gone through the plaint. Money has been claimed on the ground that the plaintiff was the lawfully wedded wife of deceased – Ram Kumar. However, no quantification has been made and, thus, the trial Court was justified in rejecting the contention of affixation of *ad valorem Court fee*. It was also justified in holding that limitation being a mixed question of fact and law, the plaint could not be rejected at the threshold. Admittedly, the suit was instituted on 17.07.2018 which is less than three years after the death of Ram Kumar. The date of knowledge of the plaintiff has still to be established.

In view of the above, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

10.11.2021

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Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No