

113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2831-2017 (O&M)

Date of decision: 17.08.2022

Samina and another

....Petitioners

Versus

Mohd. Ashraf Khan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms.Amrita Nagpal, Advocate for the petitioners

Mr. Abhijeet Singh, Advocate for

Mr. Rajesh Lamba, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

Defendant no.3 and 4 in a suit for grant of decree of declaration are the petitioners herein. The trial court by an interlocutory order has decided the primary objection, "As to whether the suit was barred by limitation or not?" The suit has been filed claiming that the various sale deeds executed in favour of the defendants are null and void. The question "As to whether the suit is barred by limitation or not?" is a mixed question of fact and law. Such an issue should not have been decided as a primary issue.

Moreover, from the reading of the order, it is evident that trial court has passed a wholly non-speaking and bereft of reasons order.

The order dated 17.03.2017 is extracted as under:-

"Arguments on the preliminary issue of limitation heard. Perusal of the case file shows that no evidence whatsoever has been led by the applicant, in order to prove establish that the suit of the plaintiff is barred by limitation. Perusal of the testimonies of the applicant namely Hamila wife of

Umar Mohd have no specific evidence in brought on he case file in order to prove the issue in question. Further perusing of the case file shows that the applicant fails to prove that the plaintiff has full knowledge of the sale deed in question from the very beginning and as such the court is of the view that the applicant has failed to prove the issue, therefore, issue in question is hereby dismissed. Now to come up on 10.04.2017 for filing the written statement.”

It is evident that the civil suit was filed in the year 2016. If this Court directs the trial court to redecide the primary issue on limitation, it would further result in delay of the suit. Hon'ble Supreme Court in '**Sathyanath & Another vs. Saroj Mani**' Civil Appeal No.3680 of 2022, decided on 06.05.2022, held as under:-

“20. The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

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31. We find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties. Order XIV Rule 2 of the Code had salutary object in mind that

mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2).”

Keeping in view the aforesaid facts, the order under challenge is set aside. The trial court is requested to decide the issue of limitation alongwith the suit. It is observed that the trial court will decide the suit uninfluenced by the order dated 17.03.2017.

The revision petition stands partly allowed.

All the pending miscellaneous applications, if any, are also disposed of.

17.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE