

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-464 of 2017 (O&M)
Date of decision: 21.11.2022

Jaishree Jain

..Petitioner

Versus

Anand Sarup Bhardwaj and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Adarsh Jain, Advocate, for the petitioner.
Mr. Kunal Dawar, Advocate, for respondent no.1 to.3

ANIL KSHETARPAL, J(Oral)

1. Defendant no.3 in a suit for declaration with a consequential relief of permanent injunction is the petitioner herein. Her application under Order VII Rule 11 CPC to reject the plaint filed by the plaintiffs, at the threshold, has been dismissed. This revision petition has been filed challenging the correctness of the aforesaid order.

2. The relevant facts, in brief, are required to be noticed.

3. The plaintiffs (respondents) filed a suit claiming that they are owners of Unit NO.0357, Block R&T, Nirvana Country, South City II, Phase-II, Gurugram. The plaintiffs after purchasing the property sold the same to defendant no.1, who was Director and Promotor of defendant no.2 (company) for Rs.1,20,00,000/-. It has been submitted that defendant no.2- M/s Vigneshwara Developers Pvt. Ltd. had assured allotment of 4 commercial units to plaintiff no.1 to 3 and in lieu of the aforesaid promise, the amount of the entire sale consideration was refunded to the defendant no.2. In para 6 of the plaint, the plaintiffs disclosed the manner in which the

entire payment of Rs.1,20,00,000/- was transferred in favour of defendant no.2 through bank transactions. In the meantime, defendant no.1 is stated to have transferred the property in favour of defendant no.3 vide sale deed dated 07.02.2014. Thus, the plaintiffs have filed the present suit impleading defendant no.3, apart from defendant no.1 and 2 as party. The rejection of the plaint has been sought on the grounds that the suit is barred by limitation and the plaintiffs have failed to pay the ad valorem court fee.

4. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

5. On the one hand, the learned counsel representing the petitioner submits that the sale deed dated 23.04.2007 is a complete and independent transaction, therefore, the suit filed by plaintiff no.1 on 10.08.2015 is barred by time. He further contends that the plaintiff no.1 being the executant, is liable to pay the ad valorem court fee on the amount of sale consideration.

6. On the other hand, the learned counsel representing the respondents submits that the plaintiffs have filed a comprehensive suit seeking a decree of declaration challenging the validity of the sale deed and consequences of the sale consideration which has gone out of their hands on account of misrepresentation by defendant no.1 and 2. He submits that, at this stage, only the contents of the plaint are required to be considered for deciding an application under Order VII Rule 11 CPC. He further informs the Court that the plaintiffs did file an application for permission to amend the plaint, in order to seek the relief of possession while offering to pay the ad valorem court fee, which has been rejected by the trial court, however, a separate revision petition against the same is pending. They undertake to pay the ad valorem court fee on the amount of Rs.1,20,00,000/- within a

period of 15 days, from today.

7. This Court has considered the submissions.

8. The suit filed by the plaintiffs is a comprehensive suit challenging the correctness of series of transactions between the plaintiffs and defendant no.1 and 2. As such, the rejection of the plaint, at this stage, will not be appropriate. The question of limitation is a mixed question of law and fact which can more appropriately be decided only after the parties have led their evidence.

9. As regard the second objection, the plaintiffs have already offered to pay the ad valorem court fee within a period of 15 days, from today. The Court permits them to deposit the same within the given time.

10. In view of the aforesaid facts, the impugned order is modified accordingly.

11. The revision petition is disposed of.

12. Needless to observe that any observations made by this Court or by the trial Court in the impugned order shall not be construed as final expression of opinion on the merits of the case. The plaintiffs shall deposit the amount irrespective of the pendency of the civil revision or any interim order therein.

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

November 21, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*