

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

CR-725-2020 (O&M)

Date of decision: 27.01.2022

Amarjit Singh and others

.....Petitioners

versus

Karam Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Rohit Nagpal, Advocate
for the petitioners.

None for respondents No.1 and 2.

Service of respondent No.3 already dispensed with.

Ms. Jaspreet Kaur Sandhu, Advocate
for respondent No.4.

FATEH DEEP SINGH, J.

Due to outbreak of pandemic COVID-19, the instant
case is being taken up for hearing through video conferencing.

Initially a civil suit titled as 'Karam Singh and another
versus Amarjit Singh and others' for declaration and possession
with permanent injunction and recovery of mesne profits was filed

between the parties in respect of land measuring 78 Kanal 03 Marlas, 31 Kanal 07 Marlas, 19 Kanal 0 Marla and 53 Kanal 07 Marlas duly described and depicted in the head note of the plaint. During the course of trial of the suit, an application under Order 7 Rule 11 was moved by the defendants for rejection of the plaint on the grounds of limitation, primarily on the averments that the suit property is based on the claim of a registered Will dated 15.12.1976 of one Kartar Kaur and over which, mutation was hotly contested. It is after almost 36 years of the mutation proceedings having culminated, the suit was filed and that is how the application was moved. The Court of the learned Additional Civil Judge (Senior Division), Kharar, vide impugned findings dated 07.01.2020, dismissed the application. Aggrieved over this order, the instant revision has come about.

Heard Mr. Akshay Bhan, Senior Advocate with Mr. Rohit Nagpal, Advocate for the petitioners.

However, none has put in appearance for the respondents after their initial appearance through counsel, despite the best efforts of the Court.

Upon hearing learned counsel for the petitioner, it is well writ large on the records that the dispute is over a registered

Will dated 15.12.1976 which was executed in favour of the present petitioners. Admittedly, Kartar Kaur died on 28.12.1983 upon which, the Will had come into operation and mutation was sought on the basis of inheritance on account of legacy by the registered Will and on which even mutation proceedings had come about. The Assistant Collector, Grade-I had decided the same in favour of the present petitioners vide order dated 27.10.1995. From this all, it is sufficiently clear that the plaintiffs were fully aware of the registered Will and a dispute had cropped up between the parties on the two sides. The very interpretation of provisions of Order 7 Rule 11 CPC ensures that the power to reject the plaint or to return it, could be exercised in clear cases. The Court has not only the power but also the imperative duty to strike out the pleadings at the initial stage akin to pass under Order 6 Rule 16 CPC. When there is no cause of action which is subsisting and the Court ought to have exercised its power under Order 7 Rule 11 CPC. In the present case with the efflux of time, the cause of action has vanished and, thus, on the bare pleadings in the plaint, the Court could adjudicate on it and no restriction is placed on the Court in the exercise of its powers under this provision. The very purpose is to prevent undue wastage of the time of the Court.

The learned Lower Court in the impugned findings had gone astray by keeping the matter alive waiting for the issues to be framed and, thus, it would certainly defeat the very purpose of provisions resulting the miscarriage of justice.

In light of what has been detailed and discussed above, the Court appears to have abdicated its powers under this provision which it ought to have exercised in the right earnest.

In view of the foregoing discussions, the impugned order is illegal and perverse and is set aside by way of acceptance of the present revision.

The present revision petition is allowed accordingly.

(FATEH DEEP SINGH)
JUDGE

27.01.2022

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No