

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

-:-

CR-1034-2022 (O&M)

Date of Decision : 24.03.2022

Pradeep Kumar

...Petitioner

versus

Kiri (now deceased) through her LRs and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Kumar Jain, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

Taken up in physical mode.

The challenge in the present revision petition under Article 227 of Constitution of India is to the order dated 10.11.2021, modified vide order dated 03.12.2021, further modified vide order dated 05.01.2022 (Annexure P-5), passed by the Additional Civil Judge, Sr. Division, Sardulgarh whereby the application filed by the defendant-petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 ('CPC' for short) has been partly allowed.

Learned counsel for the petitioner would contend that the challenge in the present petition is only to the extent whereby the application filed by the defendant-petitioner under Order 7 Rule 11 CPC on the ground of the suit being barred by limitation, has been rejected.

Learned counsel would contend that the defendant-petitioner in the application filed under Order 7 Rule 11 CPC had also challenged the suit to be not maintainable on the ground that the same was barred by limitation inasmuch as the plaintiff has challenged the judgment and decree dated 05.05.1972 by way of the present suit. The Trial Court vide the impugned

order has dismissed the application qua the ground of limitation, the same being a mixed question of law and facts, which cannot be gone into in an application under Order 7 Rule 11 CPC. Learned counsel would further contend that since a decree dated 05.05.1972 is being challenged by way of present suit, hence the suit ought to have been rejected under Order 7 Rule 11 CPC.

Heard.

The Trial Court vide the impugned order has rightly dismissed the application under Order 7 Rule 11 CPC qua the ground of limitation inasmuch as the same is a mixed question of law and fact and cannot be adjudicated upon in an application under Order 7 Rule 11 CPC. It is trite that at the time of deciding of an application under Order 7 Rule 11 CPC, only the contents of the plaint are to be seen and not the contents of the written statement or other pleadings.

Further, it has been laid down by the Supreme Court in **Chhotanben & Anr. Vs. Kiritbhai Jalkrushnabhai Thakkar & Ors.** [2018 AIR (SC) 2447] that the question of limitation cannot be adjudicated on an application filed under Order 7 Rule 11 CPC. Relevant portion of the said judgment reads as under :

“16. In the present case, we find that the appellants (plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos.1 & 2 by keeping them in the dark about such execution and within

two days from the refusal by the original defendant Nos.1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d).”

The plaintiff-respondent in the suit has claimed that she gained knowledge of the decree dated 05.05.1972 in the year 2019 when the defendant-petitioner forcibly possessed the land in question. Considering the averments made in the plaint, it would be a triable issue whether the suit is barred by limitation.

Keeping in view the law laid down by the Supreme Court in **Chhotanben's case** (*supra*), the present petition is devoid of any merit and is dismissed. Pending miscellaneous applications, if any, also stand disposed off.

March 24, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO