

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

120

CR-3725-2022 (O&M)
Date of decision: 08.09.2022

Ashish Hora and another

.....Petitioners

Versus

Chirag Hora and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Harish Goyal, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioners are impugning the dismissal of their application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short, 'the Code') by the Court below vide order dated 19.02.2020 (Annexure P-1).

Learned counsel for the petitioners *inter alia* contends that the impugned order is patently illegal and contrary to the settled principles of law pertaining to the rejection of a plaint. He submits that the Trial Court failed to appreciate that the plaintiffs had challenged mutations bearing No.10868 and 10869 in the suit in question, even though the jurisdiction of Civil Court to set aside the entries of mutation sanctioned by the revenue authorities is barred under Section 158 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as 'the Act'). Learned counsel submits that the only remedy as prescribed under the Act was to challenge mutations by way of preferring an appeal before the Divisional Commissioner. He further submits that the suit had been filed much beyond the period of limitation and the plaint was liable to be rejected on this ground as well.

I have heard learned counsel and perused the relevant material on record.

The respondents/plaintiffs filed the suit in question praying for cancellation of mutations No.10868 and 10869. In addition, the respondents/plaintiffs have prayed for the following reliefs:-

"XXX XXX XXX XXX

For separate possession by way of partition the above mentioned joint property by metes and bounds

AND

For the decree of permanent injunction restraining the defendants no.1 to 3 from raising any sort of construction over the suit property or causing any damage to the suit property and further restraining the defendants no.1 to 3 from changing the nature of the property existing on the spot and running any institute either by itself or through its official, President, Chairman, agent or attorney or any other men

ON THE BASIS OF ORAL AND DOCUMENTARY EVIDENCE"

The contention of the learned counsel that the plaint deserves to be rejected on the ground of the jurisdiction of Civil Court being barred in respect of mutations, is devoid of merit. Even if for the sake of arguments it is assumed that the Civil Court has no jurisdiction to set aside the mutations as in the instant case, still the plaint cannot be rejected on this ground since the respondents/plaintiffs have made the aforementioned reproduced multiple prayers while instituting the suit in question. Thus, even if one of the reliefs prayed for, cannot be granted as argued by learned counsel for the petitioners, the suit with respect to the other reliefs sought would still subsist. A plaint cannot be rejected partially as it has to be either rejected as a whole or not at all.

This Court also does not concur with the submissions made by learned counsel that the suit instituted by the respondents/plaintiffs

is barred by limitation. A perusal of the averments made in the plaint reveal that the respondents/plaintiffs learnt about the mutations only in December, 2016. At the stage of deciding an application under Order 7 Rule 11 of the Code, Court cannot go into the truthfulness or veracity of the averments made in the plaint. The Hon'ble Supreme Court in ***Saleem D. Agboatwala and others Vs. Shamalji Oddhavji Thakkar and others: 2021 (6) SC 502*** has held that rejection of plaint under Order 7 Rule 11 of the Code is a drastic power to terminate a civil suit at the threshold. Therefore, the condition precedent to the exercise of powers under this provision is stringent specially when rejection is sought on the ground of limitation. When the plaintiffs in the plaint claimed that they gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of adjudicating upon an application under Order 7 Rule 11 of the Code.

As a sequel to the above, the instant revision petition being devoid of any merit is dismissed in *limine*.

08.09.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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