

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

CR-4377-2019 (O&M)

Reserved on : 11.05.2022

Date of Decision : 20.05.2022

Om Parkash and Another

....Petitioners

VERSUS

Municipal Corporation, Faridabad and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate for the petitioners.

Mr. Vishal Garg, Advocate for respondent No.1

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been preferred by the defendant-petitioners challenging the impugned order dated 20.05.2019 passed by the Civil Judge (Junior Division), Faridabad dismissing the application filed by them under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) seeking rejection of the plaint filed by the plaintiff-respondent in a suit titled **Municipal Corporation, Faridabad Vs. Om Parkash and Others.**

Brief facts relevant to the present *lis*, and as are discernible from reading of the plaint, are that the defendant-petitioners filed a civil suit against the plaintiff-respondent that they were owners in possession of the property in dispute on the basis of the sale deed bearing document/*vasika* No.12549 dated 24.02.1983 and that the plaintiff-respondent herein had tried

to encroach upon the land in question. The suit filed by the defendant-petitioners was dismissed by the Trial Court, however, the appeal preferred by them was allowed vide judgment dated 17.02.2007 (Annexure P-1). The plaintiff-respondent herein (being defendant in that suit) preferred a second appeal to this Court being RSA No.3927 of 2007 which second appeal was dismissed on 04.04.2011 (Annexure P-2). Against the judgment dated 04.04.2011 passed by this Court, the plaintiff-respondent preferred a Special Leave Petition (C) No.418 of 2012 which was also dismissed vide order dated 09.01.2015 (Annexure P-3).

Along with the litigation in the civil court, proceedings regarding sanction of the mutation were also going on between the parties. The Assistant Collector 1st Grade, Ballabgarh vide order dated 28.03.2008 did not sanction the mutation in favour of the defendant-petitioners. However, their appeal was allowed by the Collector, Faridabad vide order dated 13.03.2012. The appeal by the plaintiff-respondent against order dated 13.03.2012 was dismissed by the Commissioner, Gurgaon Division vide order dated 07.02.2014. The plaintiff-respondent preferred a revision before the Financial Commissioner and vide order dated 06.07.2015 the orders passed by the Collector and the Commissioner were set aside and the order passed by the Assistant Collector was upheld. Aggrieved by the order passed by the Financial Commissioner, the defendant-petitioners herein preferred CWP No.20479 of 2015 in this Court which was allowed vide order dated 22.05.2017 (Annexure P-4) holding the order passed by the Financial Commissioner to be not sustainable in the eyes of law and was hence set aside. Aggrieved by the said order, the plaintiff-respondent herein preferred

a Letters Patent Appeal No.2137 of 2017 and vide order dated 09.11.2017 the same was also dismissed.

The plaintiff-respondent herein thereafter filed the present civil suit for declaration with consequential relief of permanent injunction stating therein that the defendant-petitioners herein are illegally and unlawfully trying to encroach and construct over the land in dispute. In para 13 of the plaint (Annexure P-7) it was stated as under :

“13. That the cause of action for filing the present suit accrued in favour of the plaintiff's department and against the defendants vide order dated 09.11.2017 passed by Division Bench of Hon'ble High Court. The cause of action further accrued in the first week of October 2018 when the officials of plaintiff's department visited at the suit property and found that the defendant No.1 and 2 are attempting to encroach the suit land on the basis of alleged sale deed and mutation as mentioned above. The cause of action accrued on 15.10.2018 when the defendant No.1 and 2 finally refused to accept the request of the plaintiff's department. Hence this is the date when final cause of action has arisen in favour of the plaintiff and against the defendants which necessitated the institution of present suit.”

The defendant-petitioners filed an application (Annexure P-8) under Order 7 Rule 11 of CPC for rejection of the plaint to which a reply (Annexure P-9) was filed by the plaintiff-respondent. The application under Order 7 Rule 11 CPC was dismissed by the Trial Court vide impugned order

dated 20.05.2019. Hence, the present revision petition by the defendant-petitioners.

Learned senior counsel appearing on behalf of the defendant-petitioners has vehemently contended that the present civil suit was clearly barred by limitation inasmuch as the plaintiff-respondent was aware of the sale deed in favour of the defendant-petitioners since the year 1997 when the suit was filed by the defendant-petitioners herein. Learned senior counsel for the petitioners has further contended that by way of the present civil suit, the plaintiff-respondent has sought declaration that the sale deed bearing *Vasika* No.12549 dated 24.02.1983 and mutation No.8489 dated 22.09.2017 and mutation No.19840 dated 19.01.2018 were null and void, is hopelessly barred by limitation. Learned senior counsel for the defendant-petitioners has further contended that from a bare perusal of the plaint (Annexure P-7) it is apparent on the face of it that the suit is clearly barred by limitation. Learned senior counsel for the petitioners, in support of his arguments, has relied upon the judgments passed by the Supreme Court in **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs [2019(3) PLR 166]**, **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) Thr LRs & Ors. [2020(3) PLR 460]**, and **Kamala & Ors. Vs. K.T. Eshwara Sa & Ors. [2008(3) RCR (Civil) 199]**.

Learned senior counsel for the defendant-petitioners has further contended that no doubt there is no quarrel with the proposition that limitation is a mixed question of law and fact, however, in a given case where from a meaningful reading of the plaint, if it is discernible that the suit was clearly barred by limitation, the Court would not hesitate in rejecting the plaint under Order 7 Rule 11 of CPC.

Per contra, learned counsel for the plaintiff-respondent has contended that the cause of action arose to the plaintiff-respondent only in the year 2018 and on a plain reading of the plaint it cannot be said that the suit was barred by limitation. Learned counsel for the plaintiff-respondent has further contended that limitation is a mixed question of law and fact and cannot be decided without leading of evidence. In support of his arguments, learned counsel for the plaintiff-respondent has relied upon the judgment of Hon'ble Supreme Court in the case of **Salim D. Agboatwala & Ors. Vs. Shamalji Oddhavji Thakkar & Ors. [AIR 2021 SC 5212]**.

Heard learned counsel for the parties as well as perused the paper book with their able assistance.

In the present case, a bare reading of the plaint (Annexure P-7) reveals that the litigation between the parties commenced in the year 1997 and the sale deed dated 24.02.1983 was well within the knowledge of the plaintiff-respondent from the year 1997. The plaint also reveals that the facts, as narrated above, were within the knowledge of the plaintiff-respondent and find mention in the plaint itself. However, it was stated in para 11 of the plaint *“That in the first week of October 2018 the officials of the plaintiff’s department visited at the suit property and found that the defendant No.1 and 2 are in illegally and unlawfully tried to encroach and construct over the land with help of Gonda type element...”*. It was further stated in para 13 *“That the cause of action for filing the present suit accrued in favour of the plaintiff’s department and against the defendants vide order dated 09.11.2017 passed by Division Bench of Hon’ble High Court. The cause of action further accrued in the first week of October 2018 when the officials of plaintiff’s department visited at the suit property and found that*

the defendant No.1 and 2 are attempting to encroach the suit land on the basis of alleged sale deed and mutation as mentioned above. The cause of action accrued on 15.10.2018 when the defendant No.1 and 2 finally refused to accept the request of the plaintiff's department".

The Supreme Court in the case of **Raghwendra Sharan Singh** (*supra*) while dealing with various judgments of the Supreme Court on Order 7 Rule 11 of the CPC, has held as under :

"6.2 While considering the scope and ambit of the application under Order 7, Rule 11 of the CPC, few decisions of this Court on Order 7, Rule 11 of the CPC are required to be referred to and considered.

6.3 In the case of T. Arivandandam (supra), while considering the very same provision i.e. Order 7, Rule 11 of the CPC and the decree of the trial Court in considering such application, this Court in para 5 has observed and held as under :

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the complaint

it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits.....”

6.4 In the case of Church of Christ Charitable Trust and Educational Charitable Society (supra), this Court in para 13 has observed and held as under :

“13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.”

6.5 In *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem (supra)*, this Court explained the meaning of "cause of action" as follows :

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

6.6 In the case of *Sopan Sukhdeo Sable (supra)* in paras 11 and 12, this Court has observed as under :

“11. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [1998(1) RCR (Civil) 391 : (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7, Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7, Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7, Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal (supra).”

6.7 In the case of Madanuri Sri Rama Chandra Murthy (supra), this Court has observed and held as under :

“7. The plaint can be rejected under Order 7, Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7, Rule 11 CPC can be exercised by the Court at any stage of the suit. The

relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7, Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7, Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be

entertained and the power under Order 7, Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

6.8 In the case of Ram Singh (supra), this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7, Rule 11 of the CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the Courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7, Rule 11 of the CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on

15.12.2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed - brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as defendant No. 10. It appears that the summon of the suit filed by the defendant being T.S. (Partition) Suit No. 203 of 2001 was served upon the defendant No.10 plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (supra) and others, as stated above, and as the suit is clearly barred by law of limitation, the

plaint is required to be rejected in exercise of powers under Order 7, Rule 11 of the CPC.”

In the case of **K. Akbar Ali Vs. K. Umar Khan & Ors. [AIR 2021 SC 1114]** it has been held as under:-

“7. In any case, an application under Order 7, Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in Income Tax Commissioner v. Debts Recovery Appellate Tribunal reported in AIR 1998 Supreme Court 634, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order 7 Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

8. In this case, a meaningful reading of the plaint as a whole makes it abundantly clear that the relief claimed in the suit is barred in view of the restricted scope of the Power of Attorney given by the first Defendant to Mr. Zahir Ali.

9. Where on the face of the averments in the plaint, the claim in a suit is based on an agreement executed through a Power of Attorney holder, the Court is not

debarred from looking into the Power of Attorney. It is open to the Court to read the terms of the Power of Attorney along with the plaint in the same manner as documents appended to the plaint, which form part of the plaint.”

Yet again in the case of **Dahiben**’s case (*supra*) it has been held that :

“14. The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.

Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under :

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>58. To obtain any other declaration.</i>	<i>Three years</i>	<i>When the right to sue first accrues.</i>

<i>59. To cancel or set aside an instrument or decree or for the rescission of a contract.</i>	<i>Three years</i>	<i>When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.</i>
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The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

In Khatri Hotels Pvt. Ltd. & Anr. v. Union of India & Anr., (2011) 9 SCC 126 : 2012(1) RCR (Civil) 676 this Court held that the use of the word 'first' between the words 'sue' and 'accrued', would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words

"right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted.

Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected."

Learned counsel for the plaintiff-respondent is not in a position to deny that the execution of the sale deed was well within the knowledge of the plaintiff-respondent since 07.08.1997 and that at no point of time, despite the litigation having reached this Court twice and the Supreme Court once, was the said sale deed ever challenged by the plaintiff-respondent.

It is trite that if on a meaningful reading of the plaint it is manifestly vexatious and meritless and that it does not disclose any cause of action, the Court would not hesitate to exercise the powers under Order 7 Rule 11 CPC. It has repeatedly been held by the Supreme Court that clever drafting creating the illusion of a cause of action needs to be nipped in the bud. In the present case, on a plain reading of the plaint, there is no denial of the fact that the plaintiff-respondent was well aware of the execution of the sale deed dated 24.02.1983 in favour of the defendant-petitioners. The plaintiff-respondent has been litigating with the defendant-petitioners before

this Court and the Supreme Court. However, at no point of time, did it choose to challenge the sale deed dated 24.02.1983.

Articles 58 and 59 of the Limitation Act, 1963 read as under :

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>58. To obtain any other declaration.</i>	<i>Three years</i>	<i>When the right to sue first accrues.</i>
<i>59. To cancel or set aside an instrument or decree or for the rescission of a contract.</i>	<i>Three years</i>	<i>When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.</i>

The period of limitation prescribed under Articles 58 and 59 of the Limitation Act, 1963 is three years which commences from the date when the right to sue first accrues.

In the present case, being a party to the earlier litigation, the right to sue first accrued would mean when the said fact first came to the knowledge of the plaintiff-respondent. Litigation commenced between the parties in the year 1997 and the present suit has been filed in the year 2018. Hence, by no stretch of imagination can the present suit be held to be within limitation merely on the saying that Letters Patent Appeal preferred by the plaintiff-respondent came to be dismissed on 09.11.2017.

In view of the above, the present revision petition is allowed and the impugned order dated 20.05.2019 is set aside. The application for rejection of the plaint under Order 7 Rule 11 stands accepted and the plaint accordingly stands rejected.

Civil revision allowed. Pending applications, if any, also stand disposed off.

20.05.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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