

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

CR-3913-2022 (O&M)

Date of decision: 15.11.2022

Rakesh Kumar

...Petitioner

Vs.

Shrikant Sharma and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Abishai Alfred George, Advocate for the petitioner.

MANOJ BAJAJ, J.

CM-13965-CII-2022

Application is allowed as prayed for.

Annexures A-1 to A-3 are taken on record.

Main case

Petitioner (defendant No.2) has preferred this revision petition to challenge the order dated 26.07.2022 (Annexure P-1) passed in Civil Suit No.908-2016 by Civil Judge (Senior Division), Panchkula, whereby his application under Order VII Rule 11 CPC for rejection of plaint, was dismissed.

Learned counsel has argued that the plaintiffs, being children of late Dina Nath have filed a suit for declaration claiming themselves to be the joint owners in possession of House No.2194 (LIG Category), Housing Board Colony, Sector-15, Urban Estate, Panchkula on the basis of natural succession by further seeking declaration that the Will executed by their father-Dina Nath registered on 25.10.1996 in favour of defendant No.2 (petitioner) is illegal, null, void and without any binding effect on their rights in any manner. Learned counsel submits that in the said suit, the defendant No.2 filed the

application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the cause of action, if any, arose in favour of the plaintiffs on 27.11.1999, whereas the suit has been filed on 26.09.2016 much after expiry of limitation period. He has argued that as per Article 58 contained in schedule appended to the Limitation Act, 1963, the suit could have been filed within a period of three years from the date when the cause of action arose, and this important issue was ignored by the Civil Judge (Senior Division) Panchkula while passing the impugned order dated 26.07.2022 (Annexure P-1). He submits that the testator Dina Nath had died on 27.11.1999 and thereafter, the period of limitation had come to an end on 28.11.2002 and apparently the suit being time barred deserves to be dismissed. He has further argued that the plaint does not meet with the requirements contemplated under Order VI Rule 4 CPC, therefore, the plaint is improper and on this ground also, trial Court ought to have rejected the same. Learned counsel has argued that the impugned order is against the law, therefore, the same deserves to be set aside and his application under Order VII, Rule 11 CPC be allowed.

During the course of the hearing, it is not disputed by the learned counsel that the registered Will propounded by the petitioner was relied upon by him firstly in the year 2014, when his application for transferring the property in his name was rejected by Housing Board Haryana (defendant No.3), whereupon he filed a writ petition bearing No.CWP-15054-2015.

At this stage, learned counsel for the petitioner/defendant No.2 has argued that the suit has been cleverly drafted by the plaintiff with an intention to bring it within the period of limitation.

After hearing the learned counsel and considering the above

background, this Court finds that as per the averments contained in para -19 of the plaint, the plaintiffs have given all the necessary facts relating to the accrual of cause of action in their favour including the filing of the writ petition by the defendant. Since the defendant is relying upon the Will, therefore, they are seeking relief of declaration that plaintiff and defendant No.1 are in joint possession of the property and the said suit was filed on 25.09.2016. Learned counsel for the petitioner is unable to produce any relevant material to show that existence of Will propounded by the petitioner was within the knowledge of the plaintiffs prior to the filing of the writ petition, therefore, at this stage, it cannot be said that the plaintiffs were aware of this instrument and its effectiveness on the date when the testator died.

A perusal of the application filed by the petitioner under Order VII Rule 11 CPC shows that except for the ground of limitation, no any other ground was raised and the trial Court has carefully examined the rival stand of the parties while dismissing the application filed by the defendant with the observation that the issue of limitation is a mixed question of law and fact and would require evidence.

Thus, this Court has no hesitation in holding that the impugned order passed by the Civil Judge (Senior Division), Panchkula does not suffer from any illegality or impropriety.

Resultantly, finding no merit in this revision petition, same is dismissed.

15.11.2022

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(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No