

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

CR-7525-2016 (O&M)

Date of decision: 09.09.2022

Kulwinder Singh and another

....Petitioners

Versus

Gurmeet Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None for the petitioners

ANIL KSHETARPAL, J (Oral)

Case has been called out thrice. Learned counsel representing the petitioners has not come forward to press the petition. On 15.10.2019 as well as on 16.12.2019, the position was no different. Hence, this Court has gone through the paperbook, itself.

The petitioners herein are the defendants in a suit for declaration that the sale deed dated 31.12.2008 is not binding on their rights. The sale deed was alleged to have been executed by defendant no.1-Avtar Singh. An application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), for rejection of the plaint, at the threshold, on the ground that such suit is not maintainable and it is barred by time, has been dismissed by the trial court. The court has observed that the question of limitation is a mixed question of law and fact, which is required to be decided after appreciating the evidence. The defendants have also failed to show as to how the suit is not maintainable.

The plaintiff is son of Sh.Avtar Singh, who is defendant no.1. He claims that the property is Joint Hindu Family, which is

ancestral and coparcenary property. He has claimed a decree for declaration that the various sale deeds executed are not binding on his rights and he is owner in possession of the suit property to the extent of 1/3rd share. At the stage of dealing with an application under Order VII Rule 11 CPC, the plaint can be rejected only if the defendant is able to make out a ground, as specified under Order VII Rule 11 CPC on the reading of the plaint itself. Such an order of rejection can be passed only if the court comes to a definite finding that such plaint should be rejected at the threshold, without calling for the written statement, evidence etc.

In the present case, the trial court has taken a plausible view, which does not require any interference.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

09.09.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE