

108

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

CR-534-2023 (O&M)

Date of Decision: 27.01.2023

Amit Kumar and others

....Petitioners

Versus

Suresh Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Varshit Garg, Advocate
for the petitioners.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting aside order dated 30.11.2022 passed by Ld. Civil Judge (Junior Division), Karnal, whereby application under Order 7 Rule 11 CPC for rejection of plaint, filed by defendants No.4, 5, 7 & 8 (petitioners herein), was dismissed.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Respondents No.1 to 4 filed a civil suit against petitioners along with proforma respondents for declaration and permanent injunction & mandatory injunction. It is stated that petitioners and respondents are related *inter se* being legal heirs of their common ancestor Late Sh. Shankar Dass, who had three sons, namely, Singh Ram, Mukand Lal and Rameshwar Dass. Singh Ram was father of respondent No.1 and 2 and grandfather of respondents No.3 and 4. Mukand Lal was father of petitioners No.3 and 4 and grandfather of petitioner No.1 and proforma respondent No.8 and father-

in-law of petitioner No.2. Parties to the suit belong to a Hindu family and are governed by Hindu Law. Respondents and petitioners are recorded as co-owners of the land as per their respective shares in the suit land. Further claim of respondents is that the parties to the suit/their ancestors had orally partitioned the suit property on 20.05.1987 in the presence of the respectable persons of the village and since then the parties were in possession of their respective shares. Later on, petitioners filed two partition proceedings, which were pending before Ld. Tehsildar under Section 111 of the Punjab Land Revenue Act. Since petitioners were not accepting their claim, the respondents herein filed the civil suit in question.

3. Upon notice, petitioners filed a detailed reply claiming that they had requested respondents No.1 to 4 to legally partition the suit land, but they refused. Ultimately, petitioners filed applications for partition and respondents No.1 to 4 never filed any objections on *Naksha Alif* or Mode of Partition. Further, they never raised any objection to the title. Per petitioners, the suit in question is hopelessly time barred, inasmuch as, even if it is presumed that there was oral partition in the year 1987, as per the Limitation Act, the same could have been enforced within three years thereof by filing an application under Section 123 of the Punjab Land Revenue Act. However, it was never so done by the respondents.

3.1. Therefore, petitioners filed an application under Order 7 Rule 11 CPC for rejection of plaint on the ground that no cause of action had arisen in favour of respondents No.1 to 4 against petitioners. In the said application, it was specifically mentioned that as per Section 158(2)(xvii) of the Punjab

Land Revenue Act, 1887, the civil Court was precluded to exercise its jurisdiction to try and entertain the instant suit. Respondents No.1 to 4 filed a reply thereto. However, vide impugned order, the said application has been dismissed.

4. Learned counsel for petitioner submits that perusal of the plaint reflects that the title of the suit property, for which partition proceedings are pending before the Revenue Court, though not concluded, it merely suggests that since partition proceedings are pending, title suit cannot be entertained by the trial Court. To support his argument, he relies upon judgment dated 17.05.2022 rendered by this Court in CWP No.8704 of 2022 titled *Atma Devi and others vs. Financial Commissioner, Haryana and others*.

5. I have heard learned counsel for petitioners and gone through the case file.

6. In my view, the contention of the learned counsel for the petitioner is against the settled proposition of law. Revenue authorities are not vested with any jurisdiction with regard to the matters of title and it is the Civil Court which can give findings on the same after allowing the parties to adduce their respective evidence. Even the judgment relied upon by learned counsel for petitioners is not applicable in the facts and circumstances of the present case.

7. Consequently, the revision petition is disposed of with liberty to petitioners to file an application before the trial Court *qua* their two-fold objections i.e., i) the suit is barred by limitation; and ii) the suit is otherwise not maintainable in view of Section 158(2)(xvii) of the Punjab Land Revenue

Act, 1887 and the trial Court is expected to render its findings *qua* the said objections by way of preliminary issues.

8. Pending civil miscellaneous application(s), if any, shall also stands disposed of.

(ARUN MONGA)
JUDGE

January 27, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No