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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2847-2023 (O&M)

Date of decision: May 08, 2023

Kanvaljit Singh and others

....Petitioners

versus

Balwinder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Jagdish Singh Mahal, Advocate for petitioners.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 08.02.2023 (Annexure P-5) passed by learned Civil Judge (Junior Division), Amritsar (for brevity, 'trial Court'), whereby application under Order VII Rule 11 of Code of Civil Procedure, 1908 (for short 'CPC') filed by petitioner-defendants for rejection of plaint, was dismissed.

2. The revision petition is premised on the averments that respondent-plaintiff filed civil suit for possession by way of specific performance of an agreement to sell dated 28.05.1998 with respect to property in question. Petitioner-defendants filed an application under Order VII Rule 11 read with Section 151 CPC for rejection of plaint alleging that suit is time barred, under-valued, proper court fee was not affixed and plaint being without any cause of action. Vide impugned order dated 08.02.2023 (Annexure P-5), learned trial Court dismissed the aforesaid application.

3. I have heard learned counsel for petitioners and gone through the record.

4. Learned counsel for petitioners would contend that plaintiff/ respondent filed suit by concealing certain facts. He would further submit that for the purpose of court fee suit was under-valued and Court fee was not properly fixed on the plaint. He would also canvass that suit is hopelessly time barred.

5. Impugned order dated 08.02.2023 (Annexure P-5) passed by learned trial Court is premised, *inter alia*, on the following reasoning:

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“4. The perusal of the file shows that vide order dated 08.02.2021, the amendment application moved by the plaintiff under Order 6 rule 17 read with Section 151 CPC has already been allowed by my Ld. Predecessor. It has been observed in para no. 4 of the said order that

“Even, the deficiency in the Court fee can be made good if the application allowed, subsequently paying the same. Since, there is mistake on the part of the applicant, that may of any kind and it should be allowed to be rectified by amending the plaint to the effect of the value of the land/property.”

5. As such, the grievance of the defendants have already been redressed. The remaining objections taken by the defendants are mater of trial. Therefore, in view of the above said discussion, the application under Order 7 Rule 11 read with Section 151 CPC stands dismissed and disposed off. Now, the case is adjourned to 21.02.2023 for consideration on the stay application.”

6. The contentions raised herein were considered and rejected by the learned trial Court giving cogent and convincing reasons. I am inclined to agree with the same. There is no room for interference in the aforesaid valid reasons recorded by learned Court below.

7. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.

8. Limitation being a mixed question of fact and law, no grounds for interference are made out. However, it is expected of learned trial Court after completion of pleadings in suit, to frame a preliminary issue of limitation, record evidence thereon and decide the issue of limitation before proceeding with the remaining trial.

9. Dismissed.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 08, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No