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

CR-2972-2023 (O&M)

Date of Decision: 15.05.2023

M/s JRB Promoters

.....Petitioner

Versus

Gurjeet Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. D.S. Malwai, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting aside order dated 31.03.2023 (Annexure P-10), passed by learned Civil Judge (Jr. Divn.), Bathinda, whereby application under Order 7 Rule 11 CPC filed by petitioner/defendant for rejection of plaint of respondents No.1 to 4, has been dismissed.

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

2.1. The suit was filed by respondents No.1 to 4/plaintiffs, *inter alia* seeking declaration to the extent that plaintiffs are co-owners to the extent of 1/3rd share of suit property and for joint possession of suit property along with consequential relief of permanent injunction restraining defendants from alienating any part of suit land. The plaint was not disclosing any cause of action and was giving impression that plaintiffs want to allege some

mistake when the decree on the basis of compromise was suffered by Gian Kaur mother of Avtar Singh and Harbhajan Singh in their favour and the said suit was filed by Gurcharan Singh, their elder brother, as their guardian and the decree was passed actually on 13.05.1970 and not on 03.05.1970. The same being beyond limitation and being barred under various provisions of law, proforma respondents/defendants No.1 to 6 filed an application for rejection of plaint under Order 7 Rule 11 CPC. Petitioner herein/defendant No.1 also filed a separate application under Order 7 Rule 11 CPC for rejection of plaint.

2.2. Respondents No.1 to 4/plaintiffs filed reply to both the applications. On 01.03.2023, arguments on both the applications were partly heard by the Ld. Trial Court and case was adjourned to 01.04.2023 for remaining arguments in these applications and on application under Order 1 Rule 10 CPC moved by plaintiffs. However, plaintiffs moved an application on 02.03.2023 for preponing the case from 01.04.2023 and for grant of interim injunction under Order 39 Rules 1 & 2 CPC.

2.3. Vide order dated 16.03.2023, Ld. Trial Court declined the application for grant of interim stay by preponing the matter, but after declining the application of plaintiffs, instead keeping the case for 01.04.2023 rather preponed it to 29.03.2023 for addressing the arguments on applications under Order 7 Rule 11 CPC.

2.4. Vide impugned common order, Ld. Trial Court dismissed both the applications.

3. Learned counsel for petitioner would *inter alia* argue that if plaintiffs were aggrieved with any wrong pleading in the civil suit of the year 1970, they could not have maintained a separate civil suit and could

have moved an application, in the same court only, as per judicial pronouncements referred in application under Order 7 Rule 11 CPC and they cannot seek such declaration through a separate civil suit, as separate civil suit is not maintainable. Therefore, applications filed by defendants No.1 to 6 and defendant No.7 separately, on a number of grounds, are liable to be allowed and plaint has to be rejected.

4. I have heard learned counsel for petitioner and gone through the record.

5. Order VII Rule 11 of CPC reads thus:

“11. Rejection of plaint. – The plaint shall be rejected in the following cases: -

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9:*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

6. Impugned order dated 31.03.2023 (Annexure P-10) passed by learned Civil Judge (Jr. Divn.), Bathinda, is premised, *inter alia*, on the following reasoning:

“xxxx xxxx xxxx xxxx

Reliance is placed upon "Raj Narain Sarin (Dead) through L.Rs.and others versus Laxmi Devi and others, reported in (2002) 10 SCC 501", wherein it was held by Hon'ble Supreme Court that "It has been the well settled principle of law that the Court should be rather hesitant to exercise the jurisdiction under Order 7 Rule 11 CPC unless the factual score warrants such exercise and the matter in issue falls within the four corners of the requirement of the statute'. In another case titled as "Popat and Kotecha Property versus State Bank of India, Staff Association reported in 2005 (4) RCR (Civil) 334", wherein the Hon'ble Supreme Court held that "Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions can not be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of rule 11 order 7 applies in those cases only where the statements made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. Moreover, it has been held also in case titled as "Harpal Singh and others versus Gajjan Singh and others, 2005 (3) RCR (Civil) 690" by Hon'ble Punjab & Haryana High Court that the suit can not be dismissed under Order 7 Rule 11 CPC on the ground of limitation since limitation is a mixed question of law and facts and also where triable issues have been raised before the Court which can not be decided in a summary manner as contemplated by order 7 Rule 11 CPC.

10. Therefore, by applying the ratio of said case law and in view of the abovesaid discussion, I am of the considered view that all the grounds mentioned in the applications under order 7 Rule 11 CPC raises triable issues and the said grounds are either pure question of facts or mixed question of law and facts which can not be decided in a summary manner by way of rejecting the plaint of plaintiff under Order 7 Rule 11 CPC. The authorities cited by learned counsel for applicant-defendants have been carefully read but same are based on different facts and are not applicable to the facts in hand.

11. Accordingly, both the applications filed on behalf of defendants-applicants No.1 to 6 as well as on behalf of defendant- applicant No.7, are without any merits and the same are hereby dismissed.

xxxx xxxx xxxx xxxx”

7. There is no room for interference in the aforesaid valid reasons recorded by Ld. Trial Court. The bar of limitation set up by petitioner is a mixed question of law and fact. I am inclined to agree with the reasons given and the view taken by Ld. Trial Court.

8. Dismissed.
9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 15, 2023
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Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No