

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

Civil Revision No. 3795 of 2023(O&M)

Date of Decision: 25.07.2023

Balesh Devi & Ors.

...Petitioners

Versus

Santosh

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Sanjay Verma, Advocate
For the petitioners.**

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners for setting aside order dated 03.04.2023 (Annexure P-5) passed by the Court of learned Civil Judge(Jr.Divn.), Sohna vide which application filed by the petitioners under Order 7 Rule 11 CPC has been dismissed.

2. The counsel for the petitioners submits that respondent Santosh widow of Rohtash is sister-in-law of Ram Kishan(since deceased) who was husband of petitioner No.1 and father of petitioners No.2 to 4. Respondent Santosh has filed suit for declaration with consequential relief of permanent injunction in order to challenge sale deed dated 21.07.1994 whereby suit property was purchased by Ram Kishan from some third person. The said challenge has been laid on the ground that the entire sale consideration was paid by respondent out of her bank account of Gurugram Gramin Bank, but due to close relations between the parties, the sale deed was registered in the name of Ram Kishan and that the parties to the suit are Hindu by religion and governed by Hindu law in matter of succession and that during his

lifetime Ram Kishan never denied the ownership of respondent over the suit property but after his death the petitioners are raising objection to the same and they intend to sell the suit property to some other person. It is further contended that as per respondent cause of action arose on 07.02.2023 when the petitioners refused to admit the ownership of respondent over the suit property. The counsel for the petitioners further submits that the sale deed in question was executed 30 years back in the name of Ram Kishan who has also died and during the lifetime of Ram Kishan or even immediately thereafter respondent never claimed her ownership over the suit property and the suit has been filed after about 29/30 years of execution of sale deed. The counsel for the petitioners further submits that the suit is clearly time barred and no cause of action ever accrued to the respondent to file the suit and further as the respondent is challenging the execution of sale deed, she is required to furnish the *ad-valorem* court fees not less than the value of the property. So, prayer is made that the present petition be allowed.

3. I have considered the submissions made by counsel for the petitioners.

4. The first plea of the petitioners is that the suit is time barred. The issue regarding limitation period involves mixed question of facts and law and thus cannot be decided without recording of the evidence. The second plea raised by counsel for the petitioners is that there was no cause of action for the respondents to file the present suit. This Court is of the view that cause of action in the present case is based on bundle of facts which again can be adjudicated only after recording of evidence. To this extent, the findings of the trial Court are affirmed.

5. The third plea raised by counsel for the petitioners is that the suit has been undervalued by the respondent and she should pay the ad-valorem court fee in the light of the law laid down by Hon'ble Apex Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors. 2010 AIR (SC) 2087** as the respondent is not in possession of suit property which is owned and possessed by the petitioners.

6. I have gone through the impugned order wherein no reference has been made to the ratio laid down by the Hon'ble Apex Court in Suhrid Singh's case (supra) with regard to issue of court fee. To this extent only, the order of trial Court is not sustainable and is accordingly set aside with a direction to decide afresh the issue of affixation of ad valorem court fee, as pleaded in application filed by the petitioners under Order 7 Rule 11 CPC, in the light of law laid down by Hon'ble Supreme Court in Suhrid Singh's case (supra). The parties are directed to appear before the trial Court on 21.08.2023.

25.07.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No