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

**CR-8041-2019 (O&M)
Date of Decision : 03.02.2023**

Vijay Singh Marwaha and Another

....Petitioners

VERSUS

Shashi Kamra @ Shashi Rani and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Akshay Jain, Advocate for the petitioners.

Mr. Divanshu Jain, Advocate for the respondents.

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ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 12.09.2019 passed by the Trial Court whereby the application under Order 7 Rule 11 CPC filed by the defendant-petitioners has been dismissed.

The brief facts relevant to the present lis are that the plaintiff-respondent No.1 filed a suit on 02.04.2013 for declaration to the effect that the plaintiff-respondent No.1 being daughter and Class-I legal heir of late Smt. Shanti Devi, widow of Balbir Singh Marwaha, was entitled to the estate of Smt. Shanti Devi w/o Late Sh. Balbir Singh Marwaha to the extent of 1/7th share and further for a mandatory injunction directing the defendant No.1 therein to transfer the estate left behind by the deceased Smt. Shanti Devi in the name of the plaintiff to the extent of 1/7th share as also for permanent injunction. In the suit, in para No.3 of the plaint, an averment was made that House No.3093, Sector 21-D, Chandigarh (RP No.3433) was transferred in the name of mother of the plaintiff, namely, Smt. Shanti Devi, vide office letter No.3233 RP/3433 G-1

dated 01.03.1993 issued by defendant No.1 i.e. Estate Office. It was further averred that the mother of the plaintiff died on 28.12.2011 without leaving behind a Will and, therefore, the property would devolve on all the seven legal heirs in equal proportions. During the pendency of the said suit, on 12.07.2013, the property was transferred in the name of Vijay Singh and Ravinder Kumar sons of late Balbir Singh, who are the petitioners herein. On 16.12.2014 a statement was made by the plaintiff-respondent No.1 herein which reads as under :

“Statement of Smt. Shashi Kangra, w/o Sh. Roshan Lal Kangra, R/o #1279, Sector 44-B, Chandigarh.

Since during the pendency of my present suit, the Estate Officer, Chandigarh has passed order No.48287, dated 12.07.2013 transferring House No.3093, Sector 21-D, Chandigarh in favour of my two brothers Vijay Singh and Ravinder Kumar. Hence no useful purpose will be served if present is allowed to continue. I want to challenge above order of Estate Officer by filing civil suit hence permission may kindly be granted to me to file fresh suit on the said cause.”

On the basis of the said statement the suit was dismissed as withdrawn with liberty to file afresh subject to legal provisions. Subsequently, the second civil suit was filed wherein the following prayers have been made :

“Civil suit for declaration to the effect that unregistered will dated 24.04.1989 as alleged to be executed by late Sh. Balbir Singh Marwaha S/o Late Sh. Gulab Singh in respect of House No.3093, Sector 21-D, Chandigarh is outcome of

fraud and is illegal, null and void in the eyes of law and is liable to be set aside.

Further suit for Declaration to the effect that transfer letter dated 12.07.2013 issued by defendant No.1 in favour of defendant No.2 and 3 is null and void and has not been issued in accordance with the procedure as prescribed under the law.

Further the suit for Declaration to the effect that plaintiff is entitled to inherit the 1/7th share out of the Estates left by late Sh. Balbir Singh Marwaha S/o Gulab Singh and Smt. Shanti Devi w/o late Balbir Singh Marwaha being her class-I legal heir.

Further the suit for Mandatory injunction directing the defendant No.1 to transfer the Estates left by late Sh. Balbir Singh Marwaha S/o Gulab Singh and Smt. Shanti Devi w/o late Sh. Balbir Singh Marwaha in the name of the plaintiff being their Class-I legal heirs to the extent of 1/7th share.

Further suit for permanent injunction restraining the defendants from alienating or transferring the House No.3093, Sector 21-D, Chandigarh in any manner or in the name of some third person by virtue of the alleged unregistered Will to the disadvantage of the plaintiff.”

The defendant-petitioners filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the suit was barred by limitation since the plaintiff was one of the witnesses of the Will dated 24.04.1989. It was averred in the application that the mother of the plaintiff had

died on 28.12.2011 and, thereafter, civil suit being 11550 of 2013 was filed on 02.04.2013 wherein the Will had been relied upon. The said civil suit was dismissed as withdrawn and the present suit would hence be barred by limitation. Vide the impugned order dated 12.09.2019, the application has been dismissed. Hence, the present revision petition.

Learned counsel for the defendant-petitioners would contend that the suit in the present case was clearly barred by limitation and Order 23 Rule 2 CPC categorically states that the law of limitation would not be affected by the first suit. It is the further contention of learned counsel for the defendant-petitioners that transfer in the civil suit filed on 02.04.2013 was specifically adverted to in para 3 of the plaint and the transfer was on the basis of the unregistered Will dated 24.04.1989 and since the plaintiff-respondent No.1 herself was a signatory to the Will, the present suit was clearly barred by the law of limitation. Learned counsel in support of his arguments has relied upon **Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) through Legal Representatives [(2019) 14 SCC 449]**; **Sadayatan Pande Vs. Ram Chandra Gopal [AIR 1934 All. 688]**; **Achut Dadaji Joshi & Ors. Vs. Parsharam Vasudev Mogre [AIR 1938 Bom. 281]**; **Dipak Das Vs. Dharjyadhan Deb & Ors. [(1997) 2 Gauhati Law Reports 123]**; **Parmanand (Dead) Subs. by LRs Vs. The Prescribed Authority (Munsif West), Meerut & Ors. [2001 SCC OnLine All. 467]** on the propositions of Order 23 Rule 2 CPC wherein it was held that the withdrawal of the suit does not check the running of limitation.

Learned counsel would further contend that the suit property was transferred in favour of the defendant-petitioners on 12.07.2013 and hence the suit filed in the year 2017 would also be clearly barred by limitation.

Per contra, learned counsel for the plaintiff-respondent No.1 has contended that the first suit filed on 02.04.2013 was for declaration to the effect that the plaintiff-respondent No.1 being the daughter and Class-I legal heir of deceased Smt. Shanti Devi, was owner to the extent of 1/7th share. The reference in para 3 of the plaint to the transfer of the property in the name of Smt. Shanti Devi was made to show that the property stood transferred on 01.03.1993 in her name upon the death of her husband Balbir Singh. It is only during the pendency of the suit that it came to the notice of the plaintiff-respondent No.1 that the property left by Smt. Shanti Devi, of which she was the absolute owner, was transferred in the names of the defendant-petitioners on 12.07.2013. It is upon finding out that the property had been transferred during the pendency of the suit that the first civil suit was withdrawn with liberty to file afresh and to challenge the transfer order dated 12.07.2013 transferring the suit property in favour of the defendant-petitioners. Learned counsel would further contend that the mother of the plaintiff-respondent No.1 died on 28.12.2011 and on 16.11.2012 an application was made by her to the Estate Office and on 02.04.2013 the suit was filed. It is further the contention of the learned counsel that the issue of limitation is mixed question of law and fact which cannot be gone into in an application under Order 7 Rule 11 CPC. In support of his contentions, learned counsel has relied upon **Salim D. Agboatwala & Ors. Vs. Shamlji Oddhavji Thakkar & Ors. [AIR 2021 SC 5212]**; **Ramesh B. Desai & Ors. Vs. Bipin Vadilal Mehta & Ors. [(2006) 5 SCC 638]**; **ABN-AMRO Bank Vs. Punjab Urban Planning & Development Authority [1999 (4) RCR (Civil) 197]**; **Kulwant Kaur Sidhu Vs. Mohinder Partap Singh Dhillon [2017 (3) RCR (Civil) 165]**; **Vaish Aggarwal Panchayat Vs. Inder Kumar & Ors. [AIR 2015 SC 3357]**; **Shaukathussain Mohammed Patel Vs. Khatunben**

Mohammedbhai Polara [2020 (1) RCR (Civil) 170]; Harpal Singh & Ors. Vs. Gajjan Singh & Ors. [2005 (3) RCR (Civil) 690]; Mohan Lal s/o Hans Raj Vs. Food Corporation of India [2015 (15) RCR (Civil) 64]; M/s Mongia Realty & Buildwell Pvt. Ltd. Vs. Manik Sethi [2022 (1) RCR (Civil) 844].

Heard.

In the present case Balbir Singh, predecessor-in-interest of the parties, died on 27.05.1989. He left behind an unregistered Will dated 24.04.1989.

The Will states that after the death of the Testator his wife would be the owner of the house as well as all other assets left by him and after her, the two sons will be owners equally. In the present case the interpretation of the Will dated 24.04.1989 would be involved as to whether provisions of Section 14(1) or Section 14(2) of the Hindu Succession Act, 1956 would apply.

The argument raised by learned counsel for the defendant-petitioners that the plaintiff-respondent No.1 was aware of the Will when she filed the earlier suit on 02.04.2013 and hence the present suit was barred by the law of limitation deserves to be rejected on the ground that in the earlier suit the reference to the transfer was to the limited effect that the suit property had been transferred in favour of Smt. Shanti Devi by the Estate Office on 01.03.1993. It is only subsequently during the pendency of the suit that the property was transferred in the name of the defendant-petitioners interpreting the Will to have given limited estate to Smt. Shanti Devi, therefore, necessitating the withdrawal of the earlier suit and the filing of the second suit.

There can be no quarrel with the proposition of law as laid down in the judgments referred to by the learned counsel for the defendant-petitioners and undoubtedly the question of limitation would be a question which would be

gone into by the Court at the time of the trial. However, at the stage of Order 7 Rule 11 CPC to go into the question as to whether the transfer of the property on the basis of the Will dated 24.04.1989 was barred by limitation would not be possible since it would need to be gone into as to whether the Will dated 24.04.1989 gave Smt. Shanti Devi a limited estate or whether as per the provisions of Section 14(1) of the Hindu Indian Succession Act, 1956 she became an absolute owner and having died intestate the property would devolve on all the legal heirs equally.

It is trite that at the time of contesting the application under Order 7 Rule 11 CPC only the contents of the plaint are to be seen and not those of the application under Order 7 Rule 11 CPC or any other pleadings. Hon'ble Supreme Court in case of **Salim D. Agboatwala (*supra*)** has held as under :

“10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”

In case of **Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai**

Thakkar & Ors. [2018 (5) RCR (Civil) 163], the Supreme Court held as under :

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the

original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

Further in the case of **Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi [2019 (1) RCR (Civil) 366]**, it has been held as under:

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

In the case of **M/s Mongia Realty & Buildwell Pvt. Ltd. (supra)**,
it has been held as under:-

“15. Since the determination of the issue of limitation in this case is not a pure question of law, it cannot be decided as preliminary issue under Order 14, Rule 2 of the CPC. Hence, we allow the appeal and set aside the judgment of the trial Judge dated 16 August 2018 and of the Single Judge of the High Court dated 4 September 2019. The issue of limitation which has been framed by the learned trial Judge may be decided, along with other issues at trial. The appeal shall stand allowed in the above terms.”

In view of the above and in view of the complicated questions involved the question whether the suit is barred by limitation can only be gone into after evidence has been led by the parties, I do not find any illegality or infirmity in the order passed by the Trial Court dismissing the application under Order 7 Rule 11 CPC. The present revision petition, which is devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

It is made clear that any observation made herein-above or by the Trial Court while dismissing the application under Order 7 Rule 11 CPC shall not be treated as an expression of opinion on the merits of the case.

February 03, 2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO