

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(114)

CR No. 684 of 2023

Date of Decision : 02.02.2023

Arun Fotedar

...Petitioner

Versus

Dr. Jitender Fotedar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kuljit Singh, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

The present civil revision petition has been filed against the interlocutory order passed by the trial court dated 20.10.2022 (Annexure P-1) by which, the application filed by the petitioner-defendant no. 1 under Order 7 Rule 11 CPC for the rejection of the plaint, has been dismissed.

Learned counsel for the petitioner-defendant no. 1 argues that in the present case, the cause of action had accrued to the respondent-plaintiff in the year 2004 whereas, the civil suit was filed in the year 2021 and hence, the same was time barred and the suit filed by the respondent-plaintiff needed to be rejected outrightly keeping in view the provisions of Order 7 Rule 11 CPC. Learned counsel for the petitioner-defendant no. 1 submits that the property in question, in respect of which the suit has been filed, is in the name of the petitioner-defendant no. 1 and the claim of the respondent-plaintiff is that he should be declared as a legal and rightful

owner to the extent of half share of the property in question on the basis of

certain averments, which were made in the civil suit. Learned counsel for the petitioner further submits that as the ownership is being claimed by the respondent-plaintiff on the basis of certain amount, which was paid in the year 2004 for construction of the said property, the ownership could have been claimed within the time period prescribed as per the provisions of the Limitation Act and as, the suit was filed by the respondent-plaintiff after approximately 17 years, the plaint should have been rejected but the trial court without appreciating the said fact, has rather dismissed the application filed by the petitioner-defendant no. 1 and hence, the said order passed by the trial court dated 20.10.2022 (Annexure P-1) may kindly be set-aside.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

In the suit, the prayer of the respondent-plaintiff is two fold. One is that he should be declared owner to the half share of the property in question keeping in view the fact that the money for the construction raised on the property in question was given by him with the understanding that half of the share will be transferred to him and further prayer is to set-aside the transfer deed dated 22.07.2014 by which, the petitioner-defendant no. 1 has sold the said share in the name of the other defendants, which fact had come to his knowledge immediately at the time of filing of the civil suit.

The argument of learned counsel for the petitioner-defendant no. 1 is that all the facts were within the knowledge of the respondent-plaintiff right from the day one hence, alleging that he did not knew about the alienation of the property in the year 2014, which is being challenged in the present suit, is incorrect hence, the suit filed by the respondent-plaintiff

is liable to be dismissed, cannot be accepted for the reason that for passing an order on an application filed under Order 7 Rule 11 CPC, only the averments in the civil suit are to be seen and not any other documents. Whether the averments made in the suit are proved to be correct or false, is to depend upon the evidence, which will come on record. The court below has rightly considered the said objections raised in the impugned order and returned the finding that qua the objection of the limitation as the same is a mix question of fact and law for which the evidence needs to be adduced and even otherwise, the respondent-plaintiff is also challenging the alienation of the property, which was done vide sale deed dated 22.07.2014, which according to the respondent-plaintiff had come to his knowledge immediately at the time of filing of the suit.

No other point was argued.

Keeping in view the reasons given by the trial court while rejecting the application filed by the petitioner under Order 7 Rule 11 CPC, no interference is called for by this court in the present civil revision petition and the same is dismissed with no order as to costs.

February 02, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No