

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Revision No. 5931 of 2018

Chander Bhan and Others
... Petitioner(s)

Versus

Aashmin and Others
... Respondent(s)

AND

2. Civil Revision No. 8081 of 2018

Chander Bhan and Others
... Petitioner(s)

Versus

Aashmin and Others
... Respondent(s)

DATE OF DECISION: 05.02.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner(s) (In CR-5931-2018).

Mr. Bharat Bhushan Sharma, Advocate
for the petitioner(s) (In CR-8081-2018).

Mr. Aditya Jain, Advocate
for the respondent No.1 to 8.

Anil Kshetarpal, J.

1. These two connected revision petitions have been filed by the respondents in the counter claim to assail the correctness of the orders passed by the trial Court on 19.07.2018 and 16.11.2018, respectively.

2. Vide order dated 19.07.2018, the respondents' application for rejection of the counter claim on the ground that the same is barred under

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referred to as “CPC”), the doctrine of *res judicata* and the suit, so filed, is beyond the period of limitation, has been dismissed.

3. Vide order dated 16.11.2018, the trial court has closed the evidence of the petitioners including the last opportunity subject to payment of cost.

4. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

5. The learned counsel representing the petitioners in Civil Revision No. 5931 of 2018 submits that the respondents have filed a previous suit which was withdrawn without seeking permission of the Court, therefore, there subsequent suit is not maintainable under order XXIII Rule 4 CPC. Hence, the same is also hit by the doctrine of *res judicata*. The learned counsel further submits that the counter claim was filed by the petitioners on 21.12.2011, whereas the sale deed in favour of the counter claimants is of dated 08.06.1973. Hence, the suit has been filed beyond the period of limitation.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. The respondents have filed a previous suit for the grant of decree of permanent injunction which was withdrawn on 16.10.2017. Subsequently, it is the petitioners (the original plaintiffs) who filed a suit for permanent injunction with a consequential relief of mandatory injunction. Thus, the defendants, who were the owners of the property on the basis of the sale deed dated 08.06.1973, filed counter claim for the grant of decree of

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of the sale deed dated 08.06.1973. Hence, the cause of action of previous suit and the subsequent counter claim is separate. Moreover, the respondents have claimed that they are the owners in possession by virtue of sale deed executed by the plaintiffs and the proforma defendants. Hence, at this stage, it would not be appropriate to declare that the suit has been filed beyond the period of limitation.

8. Keeping in view the aforesaid facts and discussion, no ground is made out to interfere with the impugned order dated 19.07.2018. Hence, the revision petition i.e. Civil Revision No. 5931 of 2018 is dismissed.

9. In Civil Revision No. 8081 of 2018, the learned counsel representing the petitioners admits that several effective opportunities have been granted to the respondents in the counter claim including the last opportunity subject to payment of cost of ₹1,000/-. Still, the counter claimants failed to produce their evidence.

10. Keeping in view the aforesaid facts and discussion, no ground is made out to interfere with the impugned order dated 16.11.2018. Hence, the revision petition i.e. Civil Revision No. 8081 of 2018 is dismissed.

**(Anil Kshetarpal)
Judge**

February 05, 2024
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No