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

CR-2017-2023(O&M)

Date of Decision: 14.02.2024

M/S. KA PROMOTERS AND DEVELOPERS PVT. LTD AND ORS.

.....PETITIONERS

VS

MAHESH CHAND AND ORS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

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

None for the respondents.

GURBIR SINGH, J. (ORAL)

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1. This civil revision is filed under Article 227 of the Constitution of India for setting aside and quashing order dated 20.03.2023 passed by Civil Judge (Jr. Division) Faridabad, whereby application filed by the petitioners under Order 7 Rule 11 CPC seeking rejection of the plaint has been dismissed.

2. The parties are being addressed as per the original plaint.

3. The plaintiffs filed a suit for declaration against defendants stating that they are co-sharers of the property to the extent of 1/3rd share which is the share of their mother and a decree of mandatory injunction directing the defendants to get the revenue entries be corrected and sale deed in favour of defendants No.11 to 14 may be cancelled and declared null and void.

A decree for permanent injunction against the defendants restraining the

defendants from alienating, selling , mortgaging or entering into any agreement to sell the suit property forcibly and illegally and in any manner.

4. Smt. Vidyawati and her sister namely, Kailashwati, were real daughters of Hoshiyar Singh son of Chunni Lal. Hoshiyar Singh, died prior to death of Chunni Lal. After the death of Hoshiyar Singh, his son Deshraj in collusion with the revenue authorities sanctioned the mutation No. 1554 dated 14.06.1951 and mutated the whole ancestral property only in his name. After the death of Desh Raj, defendants sold some portion of the said property in favour of defendants No. 11 to 14. The defendants moved an application under Order 7 Rule 11 CPC on the ground that mutation was sanctioned on 14.06.1951 whereas present suit has been instituted on 02.07.2021, which is barred by limitation. Reliance has been placed on judgments *Dahiben Vs. Arvinbhai Kalyanji Bhanusali*, (2020) 7 SCC 366 and *Rajhwendra Sharan Singh Vs. Ram Prasanna Singh* (2020) 16 SCC 601 passed by Hon'ble Supreme Court to contend that in case, the issue of limitation is raised, then the party need not be held back till final decision of the suit.

5. It is further argued that defendant No.11 purchased land measuring 11 kanals 18 marlas vide sale deed dated 17.06.2005 for sale consideration of Rs. 56,40,000/- and mutation was sanctioned in his favour. The defendant No.12 purchased land measuring 35 kanals 13 marlas vide sale deed dated 3.6.2005 for sale consideration of Rs.1,91,61,875/- and the physical possession of the same was handed over to it. The defendant No.13 purchased land vide sale deed dated 12.7.2005 for sale consideration of Rs. 85,46,250/- and was sanctioned in its favour and also purchased a land measuring 2 kanals 19 marlas vide sale deed dated 17.09.2008 for sale consideration of Rs. 62,68,750/-.

The defendant No.14 purchased land measuring 2 kanals 19 marlas vide sale deed dated 08.08.2007 for consideration of Rs.55,31,250/-.

6. It is further argued that the plaintiffs are not in possession over any portion of suit property. The suit for declaration without seeking possession is not maintainable.

7. None has put in appearance on behalf of the respondents.

8. Heard.

9. The learned Court below dismissed the application under Order 7 Rule 11 CPC. The operative part of the order is as under:-

“Heard. The relevant facts which need to be looked into for deciding an application thereunder are the averments made in the plaint. Having regard to the rival contentions of learned counsel for the parties, this Court is of the considered view that the questions/ issues raised by applicants-defendants in the application is mixed question of law and facts and cannot possibly be determined without adducing evidence by the parties. All the arguments now sought to be raised on behalf of applicants are not relevant at this stage and the same may be deeply necessary at the time of final adjudication. Therefore, the present application is hereby dismissed. No order as to cost.”

10. No doubt, at the time of disposal of the application under Order 7 Rule 11 CPC, the averments in the plaint are to be seen but in the averments itself, it is written that part of the suit property have been sold but said sale deeds have not been challenged. Mutation No. 1554 is challenged after about 70 years. When mutation No. 1554 was sanctioned, even Hindu Succession Act had not come into force. The learned trial Court dismissed the application without taking into consideration various aspects of the case. Not in every case, issue of limitation is mixed question of law and fact. The Court is required to pass order how question of limitation is a mixed question of law and fact. It is

the duty of the Court to pass a speaking order and impugned order, which is non-speaking, is not sustainable in the eyes of law, so order 20.03.2023 passed by trial Court is hereby set aside.

11. In view of the above, present revision petition is allowed. Learned trial Court is directed to decide the application moved by the petitioner under Order 7 Rule 11 CPC afresh, in accordance with law by passing speaking order considering the arguments to be advanced by the learned counsel for the parties.

12. The parties are directed to appear before the learned trial Court on 01.03.2024.

13. Pending application, if any, shall also stand disposed of.

14.02.2024
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No