

2024:PHHC:049147
**165 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-2130-2024 (O&M)
Date of decision: 09.04.2024

Shyam Prem Family Trust

....Petitioner

Versus

Sohan Lal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. D.S.Patwalia, Sr. Advocate with
Mr. Parikshit Goyal,
Mr. Harsh Sethi,
Ms. Alisha Sharda, Advocates for the petitioner

ANIL KSHETARPAL, J (Oral)

1. In this revision petition, the petitioner, who is defendant before the trial court, assails the correctness of the order dismissing his application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') to reject the plaint at the threshold. In substance, the respondents have filed a suit for the grant of decree of declaration to the effect that they are tenants in cultivating possession of the property on payment of 'Chakota' and the revenue entries in respect of the suit property have wrongly been entered while deleting their names. The plaintiffs are claiming that their predecessor was in cultivating possession as a tenant on payment of 'Chakota' which was recorded in the Jamabandi for the year 1989-90. However, subsequently, in the revenue records their names have been deleted, although they continue to be in possession of the property as tenants.

The petitioner filed an application under Order VII Rule 11 CPC on the following grounds:-

i) the plaint does not disclose cause of action;

ii) the suit has been filed beyond the period of limitation.

2. The trial court has refused to reject the plaint.

3. Heard the learned counsel representing the petitioner at length and with his able assistance perused the paperbook.

4. Learned counsel representing the petitioner contends that the plaint filed by the plaintiff does not disclose cause of action. From 1994-95 onwards the entry in the Jamabandi is not in favour of the plaintiff. He further submits that the suit has been filed after a period of 29 years from the date the entry in the revenue record was deleted.

5. This Court has considered the submissions made by the learned counsel representing the petitioner.

6. It is the plaintiff's case that first their names have wrongly been deleted from the revenue record. Hence, the plaintiffs do have a cause of action. Moreover, at this stage, only assertions in the plaint are required to be seen.

7. With reference to the second argument, the issue of limitation is a mixed question of law and fact and no ground to interfere is made out. However, it shall be open to the petitioner to pray to the trial court to settle distinct and separate issue on the objections, which may be taken by the petitioner while filing the written statement.

8. Hence, dismissed.

9. All the pending miscellaneous applications, if any, are also disposed of.

09.04.2024
rekha
Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(ANIL KSHETARPAL)
JUDGE