



127 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1748-2022(O&M)
Date of decision : 18.07.2024

Arjun Singh @ Arjan Singh ...Appellant

Vs.

Mukhtyar Singh and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Vijay Lath, Advocate and
Mr. S.K. Raghuvanshi, Advocate
for respondent No.1.

Mr. Mukul Aggarwal, Advocate
for respondents No. 3 and 4.

ANIL KSHETARPAL, J. (Oral)

1. In this regular second appeal, the plaintiff assails the correctness of the trial court's order passed while rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, which in appeal has been affirmed by the First Appellate Court. On perusal of the trial Court's order, it is evident that the following reasons have been recorded to reject the plaint:-

1. The plaintiff has not explained how the suit property is joint and, if so, who are other co-sharers. No other co-sharers were made party to the suit.
2. The documents attached by the plaintiff clearly show that Sh. Mukhtyar Singh is adopted son of Sh. Pala



Singh and in the decree dated 03.02.1983, Sh. Mukhtyar Singh was declared the owner in possession of half share of the suit property.

3. The plaintiff has no cause of action and as he has failed to state in what capacity he has challenged the judgments and decrees.
4. As per the Limitation Act, the period of limitation for filing a suit to challenge the judgment and decree is three years, whereas, in this suit the correctness of the decrees passed in the years 1991 and 1993 have been challenged.
5. The plaintiff is the marginal witness of four sale deeds.
6. The plaintiff has not disclosed whether Sh. Bahal Singh and Sh. Balkar Singh are still alive or not. They have not been made party.
7. The plaintiffs has not come to the Court with clean hands.
8. The plaintiff by clever drafting of the plaint has attempted to make out an illusory cause of action in order to bring the suit within limitation.

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

3. Learned counsel representing the appellant contends that the plaint



can be rejected only as per the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908. While referring to the plaint, he submits that the plaintiff is alleging that Sh. Pala Singh never adopted Sh. Mukhtyar Singh. Hence, any subsequent transfer by Sh. Mukhtyar Singh would not confer any right upon the defendants. He further submits that cause of action was pleaded in para nos. 9, 10 and 11 of the plaint, which reads as under:-

- “9. That the plaintiff came to know about all the episode regarding the impugned decrees and the judgments and the sale deeds after registration of FIR No.224 dated 20.03.2017, U/s 420/406/506/120-B IPC, P.S. Chandni Bagh, Panipat against Krishan Kumar and Ramesh Chug and thereafter the plaintiff filed suit for declaration against Krishan Kumar, Ramesh Chug and defendant No. 4 Sikhar regarding the sale deed in favour of defendant No. 4, which is pending regarding sale consideration.*
- 10. That the plaintiff came to know regarding the impugned documents mentioned litigations and in the above the plaintiff requested the defendants to get the impugned decree and judgments and sale deeds set-aside to which the plaintiff is not a party and these all documents are not binding on the rights of the plaintiff, SO the plaintiff has a good cause of action to file and maintain the present suit.*
- 11. That the cause of action arose firstly on 20.03.2017 at the time of registration of impugned FIR against the some of the defendants and secondly in July, 2017, when the plaintiff requested the defendants to set aside the impugned documents and the cause of action is still continuing one.”*



4. *Per contra*, the learned counsel representing the respondents contends that the plaint has been correctly rejected as the plaintiff filed the suit after a period of 26 years from the decree, which was passed in the year 1991. He was also a marginal witness to four sale deeds, which have been challenged in the suit. He submits that the suit has been filed beyond the prescribed period of limitation as the decree is required to be challenged within 3 years.

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

6 While rejecting the plaint, the Court is required to examine the contents of the plaint alongwith the documents attached thereto. At that stage, the Court cannot go into the merits of the case.

7. The first reason assigned by the Court is incorrect because in para 1 of the plaint, the plaintiff states that Sh. Pala Singh and Sh. Bal Singh were allotted the suit property in the year 1971. The plaintiff is son of Sh. Bal Singh. It is also claimed by the plaintiff that Sh. Pala Singh, who was his uncle, died issueless and un-married. Hence, the share of Sh. Pala Singh came to Sh. Bal Singh.

8. The trial Court's second reason is also not sustainable because even if in the documents attached in the plaint, it is reflected that Sh. Mukhtyar Singh is the adopted son, however, it is not substitution of evidence. It cannot be treated as admission of the plaintiff to the effect that Sh. Mukhtyar Singh is adopted son of Sh. Pala Singh, particularly, when he has specifically asserted in the plaintiff that Sh. Mukhtyar Singh was never adopted by Sh. Pala Singh.



Similarly, the Court has erred in recording reason No.3 that the plaintiff has no cause of action. The plaintiff claimed the property being son of Sh. Bal Singh. He has asserted that Sh. Pala Singh died issueless and un-married and therefore, his share was inherited by Sh. Bal Singh and consequently, it came to him.

9. With reference to the period of limitation, the trial Court has erred in observing that the suit is hopelessly time barred. It is admitted fact that the plaintiff is not party to the aforesaid consent judgments and decrees. He has averred about the knowledge in the year 2017. At this Stage, it is not appropriate for the Court to declare that the suit filed by the plaintiff was beyond prescribed period of limitation.

10. Similarly, the Fifth reason is also erroneous because the plaintiff does not attempt that he has signed the aforesaid sale deeds as marginal witness. The aforesaid documents are yet to be proved. These have to be confronted to the plaintiff. This will be subject matter of evidence. Similarly, the sixth reason assigned by the Court has no legs to stand because in the plaint, the plaintiff is required to assert bare minimum facts. The evidence is not to be made part of the plaint.

11. The next reason assigned by the Court is perverse. The plaint cannot be rejected on the ground that the plaintiff has not come to the Court with clean hands.

12. The last reason assigned by the trial Court is without substance because the plaintiff has asserted multiple cause of actions and the Court was required to permit him to lead evidence and prove those facts.



13. This Court has gathered impression upon reading the judgments passed by the courts below that the courts are rejecting the plaint as if they are deciding the suit, which is not the scope of decision at the stage of Order VII Rule 11 of the Code of Civil Procedure, 1908. Hence, the impugned orders are set aside. The suit filed by the plaintiff is restored to its original number.
14. Needless to observe that this Court has not expressed any opinion on the merits of the case and the Court while finally deciding the suit shall decide it independently.
15. The parties through their counsel are directed to appear before the First Appellate Court on 14.08.2024.
16. The appeal stands disposed of.
17. All the pending miscellaneous applications, if any, are also disposed of.

18.07.2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No