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

CR-3876-2022 (O&M)

Date of Decision : 05.12.2024

Bhag Singh

... Petitioner(s)

Versus

Mohinder Singh @ Karnail Singh & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Onkar Rai, Advocate for the petitioner.

Mr. APS Sandhu, Advocate for the respondent Nos.1 to 3.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the order dated 02.07.2022 whereby the application filed by the defendant No.1-petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 to 3 filed a suit seeking a declaration to the effect that they alongwith the defendant Nos.1 and 10 are joint owners and co-sharers in possession of residential premises as detailed in the plaint on the basis of a registered Will dated 19.08.1975 and further seeking a declaration that the sale deed dated 22.01.1996 executed by Avtar Singh in favour of the defendant No.1-petitioner herein qua the residential premises was illegal, null and void and without any consideration. The defendant No.1-petitioner herein filed his written statement. Subsequently, an application was filed by the defendant No.1-petitioner herein under Order 7 Rule 11 CPC for rejection of

the plaint on the ground that the suit was false, frivolous, baseless and based on concocted facts. It was further averred that the defendant No.1-petitioner herein had contested a long litigation upto the High Court and the case was decided in his favour and the order had attained finality. It was further stated in the application that these facts were well within the knowledge of the plaintiff-respondent Nos.1 to 3 and that the entire details had been given in the written statement and the written statement should be read as part of the application under Order 7 Rule 11 CPC. Reply was filed to the said application. Vide the impugned order dated 02.07.2022 the application has been dismissed. Hence, the present revision petition.

3. Learned counsel for the defendant No.1-petitioner would contend that the plaintiff-respondent Nos.1 to 3 were aware of the litigation and that they falsely stated in their plaint that there was no other litigation between the parties. It is further the contention of the learned counsel that the plaintiff-respondent Nos.1 to 3 were well aware of the sale deed. However, despite being fully aware of the sale deed, they did not take any action and now the present suit has been filed. It is further the contention of the learned counsel that the suit is barred by limitation. In support of his contentions, the learned counsel has relied upon the judgments in the cases of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs [2020 (16) SCC 601]** and **Kamala & Ors. Vs. K.T. Eshwara Sa & Ors. [2008 (12) SCC 661]**.

4. *Per contra*, the learned counsel for the plaintiff-respondent Nos.1 to 3 states that the defendant No.1-petitioner is wanting the case to be

decided on merits on an application under Order 7 Rule 11 CPC. It is further the contention of the learned counsel that even in the application filed under Order 7 Rule 11 CPC, the ground of limitation was not even raised nor was it argued before the Trial Court. The learned counsel has further relied upon the judgments in the case of **Urvashiben & Anr. Vs. Krishnakant Manuprasad Trivedi [2019 (1) RCR (Civil) 366]**, **M/s Om Shakti Enterprises, Safidon & Anr. Vs. Pushpa Rani [2023 (1) RCR (Civil) 81]**, **Saleem Bhai & Ors. Vs. State of Maharashtra & Ors. [2003 (1) RCR (Civil) 464]** and **G. Nagaraj & Anr. Vs. B.P. Mruthunjayanna & Ors. [2023 (2) RCR (Civil) 567]** to contend that while deciding the application under Order 7 Rule 11 CPC only the contents of the plaint are to be seen and if on a meaningful reading of the plaint, a case is made out, there would be no ground to reject the plaint.

5. I have heard the learned counsel for the parties.

6. In the present case, the arguments being raised by the learned counsel for the defendant No.1-petitioner are all on merits. Infact, on a meaningful reading of the plaint none of the arguments which have been made by the learned counsel for the defendant No.1-petitioner are made out. It is trite that while deciding the application under Order 7 Rule 11 CPC only the contents of the plaint are to be seen. Neither the written statement nor the averments made in the application can be considered for rejecting a plaint under Order 7 Rule 11 CPC. The application itself states that the written statement be read as part of the application and the same be considered while deciding the application under Order 7 Rule 11 CPC which is totally contrary

to all settled principles of law. While exercising the powers under Order 7 Rule 11 CPC what is required to be seen is that on a meaningful reading of the plaint, whether the averments made in the plaint are contrary to the statutory law or barred by any law and whether a case is made out for rejection of the plaint at the very threshold.

7. Hon'ble Supreme Court in the case of **Urvashiben** (supra) has held as under :

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

8. In the present case it cannot be said on a meaningful reading of the plaint that no cause of action is made out. The argument of the learned counsel for the defendant No.1-petitioner that the plaintiff-respondent Nos.1 to 3 were aware of the sale deed and, hence, the present suit is not maintainable, is not made out from the contents of the plaint. Rather, the stand taken by the plaintiff-respondent Nos.1 to 3 is that their signatures had been taken on blank-sheets of paper. Further, the judgments relied upon by the

learned counsel for the defendant No.1-petitioner would not come to his aid as in the application filed under Order 7 Rule 11 CPC the ground of limitation was not even raised nor was the same argued before the Trial Court. The defendant No.1-petitioner cannot now be permitted to raise a new ground of limitation before this Court. What the defendant No.1-petitioner infact seeks is a decision on the merits of the case on an application under Order 7 Rule 11 CPC which is not permissible in law.

9. In view of the above, I do not find any illegality or infirmity in the impugned order. The present revision petition being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

05.12.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO