

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2708-2021(O&M)
Date of Decision: May 09, 2024

Manish and others
...Petitioners

Versus

Satpal and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Deepak Girotra and Mr.Rishab Goyal, Advocates
for the petitioners.

Mr.Munish Kumar Garg, Mr.Puneer Kumar and
Mr.Tajveer Singh, Advocates for contesting respondent No.1.

ARCHANA PURI, J.

Challenge in the present petition is to the order dated 05.10.2021 passed by learned trial Court, whereby, an application under Order 7 Rule 11 CPC, for rejection of the plaint, filed at the instance of the petitioners, was dismissed.

For convenience of the discussion, the parties are referred to as making appearance before learned trial Court.

The facts, as culled out from the paperbook are as follows:-

That, initially, plaintiff-Satpal (who is respondent No.1 in the present petition) had filed a suit against present petitioners (who are defendants No.2 to 4 before learned trial Court) as well as their parents Smt.Parmila-defendant No.1 and Rajesh-defendant No.2, thereby, seeking declaration vis-a-vis, legality and validity of the judgment and decree dated 31.10.1992

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passed in Civil Suit No.453 dated 22.07.1992 and sanctioning of mutation as well as subsequent revenue entries and also further sought consequential relief of permanent injunction to restrain defendants from alienating the suit land, in any manner.

After making appearance, the petitioners-defendants filed an application under Order 7 Rule 11 read with Order 22 and Order 32 Rule 1 and 2 CPC, wherein, it was asserted that defendant No.1-Parmila, widow of Rajesh had died on 12.03.2014 and defendant No.5-Rajesh had died on 25.09.2008. It was further stated that plaintiff-respondent No.1 was well aware of the death of aforesaid persons and suit has been filed against dead persons, which is not maintainable and suit is liable to be rejected. Even, defendant No.4 is minor, who has not been impleaded through guardian/next friend, as required under Order 32 Rule 1 and 2 CPC. As such, it was prayed that the plaint be taken off the file and liable to be rejected.

Also, it was averred that the suit is barred by limitation and on this count also, it is liable to be rejected and further, the plaintiff had filed the suit for declaration simplicitor, without prayer for possession, which is not maintainable. It was also averred that the trial Court has no jurisdiction and the suit has not been properly valued and as such, a prayer was made for rejection of the plaint.

However, reply was filed, wherein, the assertions so made, were denied. Rather, it was asserted that due to some clerical mistakes, names of Parmila and Rajesh, have been arrayed as parties and it is a curable defect. The plaintiff had already filed an application for permission

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to amend the title of the case and furthermore, the question of limitation is mixed question of law and fact. As such, a prayer was made for dismissal of the application.

After hearing learned counsel for the parties, vide order dated 05.10.2021, the aforesaid application for rejection of the plaint, was dismissed by learned trial Court.

Feeling aggrieved, the petitioners-defendants No.2 to 4 have filed the present revision petition.

In pursuance of notice issued, contesting-respondent No.1 made appearance through counsel.

Learned counsel for the parties heard.

At the very outset, it is pertinent to mention that Pramila and Rajesh had been impleaded as defendant No.1 and defendant No.5, in the suit before learned trial Court and defendants No.2 to 4 i.e. Manish, Manisha and Mehak, are their children. Manish and Manisha are the major son and daughter of Rajesh and Parmila, whereas, Mehak is their minor daughter. So far as, Rajesh and Parmila are concerned, it is not disputed about them to have died. It is asserted that they have been impleaded as party, inadvertently, on account of clerical error. If it be so, as observed aforesaid, the legal heirs of the deceased are also party to the suit and therefore, it cannot be said that the plaint ought to be rejected in this manner. Whatsoever, may be the impact, on account of factum of death of defendant No.1-Parmila and defendant No.5-Rajesh, that can be taken care of, at the later stage. However, at this stage, when already the legal heirs are

party to the suit, in piecemeal, the suit, as such, cannot be rejected.

So far as, Mehak-defendant No.4 is concerned, she is stated to be minor. In the application, it is asserted that the plaint be taken off the file. However, it has been correctly observed by learned trial Court that provision under Order 32 Rule 1 and 2 CPC relates to 'where the minor person had filed the suit', he/she cannot file the suit without next friend and in these circumstances, the plaint is required to be taken off the file'. However, in the case in hand, Mehak is impleaded as defendant No.4, who is stated to be minor. In the light of the same, the plaint, as such, is not required to be taken off the file. However, the Court, while following the provision of Order 32 Rule 3 CPC, can always have the option available, to appoint a proper person to be guardian for the suit, for such minor. In these circumstances, at this stage, solely on account of status of defendant No.4 to be minor, as such, do not call for the rejection of the plaint.

Besides the aforesaid, even the objection relating to the suit being barred by limitation has been taken. It is assiduously submitted that judgment and decree under challenge, was passed in the year 1992 and the suit had been filed after 27 years, despite having knowledge regarding the said judgment and decree. To know about the same, very rightly it has been observed by learned trial Court that for consideration of application under Order 7 Rule 11 CPC, the Court has to confine itself to the contents of the plaint. In the light of the same, close perusal of plaint Annexure P-1, clearly reveals that it is categorical claim that father of Rajesh did not disclose about the fact of passing of the judgment and decree dated 31.10.1992 to the

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father of the plaintiff and they had got decree of agricultural land, in favour of his son Rajesh. Furthermore, also, it is specifically pleaded that father of the plaintiff, during his lifetime and thereafter, plaintiff and his brothers remained in peaceful possession of the suit land. It was only in first week of February 2019, the defendants threatened that they are owners of the suit land, by virtue of Court decree and subsequent mutation and they will alienate the suit land to somebody else. Also further, it is specifically pleaded that after obtaining certified copy of judgment and decree and revenue record, he came to know that father of the defendants had played a fraud.

Thus, such being the assertions made in the plaint, it cannot be conclusively be held that the suit is barred by limitation. That is a mixed question of law and facts, which as such, cannot be appraised properly, at this stage and therefore, in the light of the contents of the plaint, the submission made, on the count of suit, being barred by limitation, as such, does not hold good.

In the light of the aforesaid observations, learned trial Court has correctly dismissed the application filed for rejection of the plaint. Consequently, the impugned order brooks no interference, by way of exercise of revisional jurisdiction.

Hence, the present revision petition stands dismissed.

May 09, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No