



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

118**CR-7770-2023 (O&M)****Date of Decision : 24.07.2024**

ABDUL GAFOOR (DECEASED) THR LRS & ANR.

.... Petitioners

VERSUS

ASHOK KUMAR VERMA

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. K.B. Raheja, Advocate for the petitioners.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been preferred by the defendant-petitioners challenging the order dated 04.08.2023 passed by the learned Civil Judge (Junior Division), Malerkotla whereby the application filed by them under Order 7 Rule 11 of the Civil Procedure Code, 1908 was dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for permanent injunction for restraining the defendant-petitioners from dispossessing and interfering in the peaceful possession, use and enjoyment of the plaintiff-respondent over the shop bearing Municipal No.B-16/605 measuring 11.5/6 square yards as detailed in the plaint. The defendant-petitioners herein filed an application under Order 7 Rule 11 CPC for rejection of the plaint averring therein that earlier a petition for eviction had been filed against one Rakesh Kumar and in the said eviction petition Rakesh Kumar was directed to hand over vacant possession of the shop in dispute to the present defendant-petitioners.

Thereafter, the present plaintiff-respondent, namely, Ashok Kumar had filed objections which were allowed and an appeal against the said order is pending adjudication before the Appellate Court. Hence, rejection of the plaint was sought on the ground that the suit was barred under Order 21 Rule 101 CPC. Vide the impugned order the said application was dismissed.

3. Learned counsel for the defendant-petitioners would contend that since the execution arising out of the eviction petition was pending in which the present plaintiff-respondent had filed an objection petition and the matter was sub-judice, the present suit was barred. Learned counsel has relied upon the judgments of this Court in **Jeet Singh & Ors. V/s Mohan Singh & Ors. [1990 (2) PLR 466]** and **Jaswant Singh & Anr. V/s Kuldip Raj & Ors. [2011 (2) PLR 368]** to contend that all relevant questions regarding title are to be decided by the Executing Court concerned.

4. Heard.

5. It is trite that while deciding an application under Order 7 Rule 11 CPC only the contents of the plaint and the documents, if any, appended with the plaint, are to be seen. Neither the contents of the written statement, if any filed, nor the contents of the application under Order 7 Rule 11 CPC can be seen.

6. In case of **Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors. [2018 (5) RCR (Civil) 163]** the Supreme Court held as under :

*“12. What is relevant for answering the matter in issue
in the context of the application under Order VII Rule*

11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half

(1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

Further in the case of **Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi [2019(1) RCR (Civil) 366]** it has been 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.”

7. From a bare perusal of the plaint, which has been appended with the present petition as Annexure P-4, it cannot be said that the same is barred by law.

8. The judgments relied upon by the counsel for the defendant-petitioners would be of no avail as the same pertains to Order 21 Rules 97, 98, 99 and 100 CPC.

9. In view of the above, I do not find any illegality and infirmity in the order passed by the learned Trial Court. The present revision petition, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

24.07.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No