



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 341 of 2025 (O&M)

Date of Decision: 03.02.2025

Ramanand Sharma and Others

... Appellant(s)

Versus

Smt. Attar Bai and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Saurabh Bajaj, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. This regular second appeal has been filed against the concurrent orders passed by both the Courts below while rejecting their suit on the ground that the plaintiffs have failed to disclose any cause of action in their plaint and there is no further averment to show as to whether their suit is within limitation or not.

3. The learned counsel representing the appellants has produced a copy of the plaint. He failed to draw the attention of this Court to the averments with regard to the cause of action for filing the suit which is necessary as per Order VII Rule 1 of the Code of Civil Procedure, 1908

4. The learned counsel representing the appellants submits that the amendment in the plaint could have been permitted to cure the defects. He further submits that the suit has already been dismissed on the ground that it was filed beyond the period of limitation.

5. This Court has considered the submissions of the learned counsel representing the appellants.

6. The plaint has already been rejected by both the Courts below. The plaintiffs never prayed for permission to amend the plaint before both the Courts below. Now, at this stage, permitting the plaintiffs to amend the plaint would entail further delay. Rejection of the plaint, in exercise of the powers under Order VII Rule 11 CPC, is not an adjudication on the merits of the case. In such circumstances, the plaintiffs can file a fresh suit after making necessary averments. On the careful reading of para 11 of the impugned order passed by the Trial Court, it is evident that the Court has only made an observation that the averments in the plaint do not show as to whether the plaintiffs' suit is within limitation or not. Such observation does not amount to rejection of the plaint on the ground that it was filed beyond the period of limitation.

7. With the observations made above, the present appeal is disposed of. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 03, 2025
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No