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

CR-3565-2024 (O&M)

Date of Decision : 03.03.2025

Sukhvir Singh & Anr

... Petitioner(s)

Versus

Gurjeet Singh & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harkaran Singh, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the order dated 20.05.2024 dismissing the application filed by defendant Nos.1 and 2-petitioners under Order 7 Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint primarily on the ground that the same is barred by limitation.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 and 2 herein filed a suit for declaration challenging a Will in favour of defendant Nos.1 and 2-petitioners herein dated 04.08.2017 in respect of land measuring 14 kanals 16 marlas and further sale deed executed by defendant Nos.1 and 2-petitioners herein in favour of defendant No.3-respondent No.3 herein. The defendant Nos.1 and 2-petitioners herein filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the same was barred by limitation. It was stated in the application that the cause of action arose on 19.07.2019 when the plaintiff-respondent Nos.1 and 2 appeared before the SDM Kharar, however, the date of

knowledge has wrongly been mentioned as 19.04.2023. Reply was filed to the said application. Vide the impugned order dated 20.05.2024, the application was dismissed. Hence, the present revision petition.

3. Learned counsel for the defendant Nos.1 and 2-petitioners would contend that the suit was barred by limitation on the ground that the plaintiff-respondent Nos.1 and 2 had filed an application for cancellation of the mutation before the Collector and the proceedings were contested and hence the date of knowledge as mentioned in the plaint is incorrect.

4. I have heard the learned counsel for the defendant Nos.1 and 2-petitioners.

5. In the present case a specific query was put to the learned counsel for the defendant Nos.1 and 2-petitioners as to whether the ground of limitation is made out from a meaningful reading of the plaint. He states that a wrong date has been mentioned regarding when the plaintiff-respondent Nos.1 and 2 gained knowledge and hence the application under Order 7 Rule 11 CPC ought to have been allowed. It is further contended by the learned counsel that since earlier the mutation was challenged and the proceedings were contested, hence the said date has incorrectly been mentioned by the plaintiff-respondent Nos.1 and 2. The learned counsel for the defendant Nos.1 and 2-petitioners has not been able to show any pleading to that effect in the plaint.

6. It is trite that while dealing with an application under Order 7 Rule 11 CPC only the plaint is to be seen. At the time of contesting the application under Order 7 Rule 11 CPC only the contents of the plaint are to

be seen and not those of the application under Order 7 Rule 11 CPC or any other pleadings.

7. Hon'ble Supreme Court in case of **Salim D. Agboatwala & Ors. vs. Shamalji Oddhavji Thakkar & Ors.** [AIR 2021 SC 5212] has held as under :

“10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”

8. 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.”

9. 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.”

10. In view of the law laid down by the Hon’ble Supreme Court as well as on a meaningful reading of the plaint, it cannot be said that the suit is barred by limitation.

11. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

03.03.2025

Yogesh Sharma

(ALKA SARIN)

JUDGE

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