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

CR-6004-2024 (O&M)

Date of Decision : 07.03.2025

Malti Singh

... Petitioner(s)

Versus

Prakash Chand & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jaskaran Jeet Singh Sibia, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the impugned order dated 09.05.2024 whereby the application filed by defendant No.2-petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for declaration with consequential relief of mandatory and permanent injunction. The prayer in the suit was for passing a decree of declaration to the effect that the sale deed No.6940 dated 12.10.2000 registered in the office of the Sub-Registrar, Faridabad in favour of defendant No.2-petitioner herein is *ex facie*, illegal, without any right authority or mala fide. A decree of permanent injunction was also sought as well as a decree of mandatory injunction. Written statement was filed by defendant No.1 (respondent No.2 herein). An application for rejection of the plaint was filed under Order 7 Rule 11 CPC on behalf of defendant No.2-petitioner herein. Reply was filed to the said application. Vide the impugned

order, the application was dismissed. Hence, the present revision petition.

3. Learned counsel for the defendant No.2-petitioner has made three-fold submissions. First is that the suit is barred by limitation inasmuch as the sale deed dated 12.10.2000 is being challenged and the agreement to sell being relied upon by the plaintiff-respondent No.1 pertains to the year 1999. The second submission of the learned counsel is that the suit has been undervalued and that *ad valorem* court fees would be payable. Third submission is that no cause action is made out.

4. I have heard the learned counsel for the defendant No.2-petitioner.

5. In the present case, the application under Order 7 Rule 11 CPC has been dismissed. It is trite that at the time of dealing with an application under Order 7 Rule 11 CPC, only the contents of the plaint and documents appended thereto are to be seen and not those of the application under Order 7 Rule 11 CPC or any other pleadings. A meaningful reading of the plaint reveals that in paras 5 and 6 of the plaint it has been stated that on 28.05.2023 defendant No.2-petitioner herein alongwith some other people in collusion with defendant-respondent No.4 showed some false and frivolous documents in favour of defendant No.2-petitioner and tried to interfere in his peaceful possession. It has been averred in para 6 that the sale deed was shown to him when he approached defendant-respondent No.4 i.e. SHO, Police Station Palla, Faridabad to take action. In view of the averments in the plaint, at this stage it cannot be said that the suit is barred by limitation.

6. 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.”

7. 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.”

8. 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.”

9. Issue of limitation has been held to be a mixed question of law and fact. As noticed above, the date of knowledge mentioned is 28.05.2023. It would be a matter of evidence as to whether the suit is barred by limitation.

10. Second submission of the learned counsel for the petitioner that *ad valorem* court fee would be payable also deserves to be rejected on the ground that in the present case the plaintiff-respondent No.1 is not a signatory to the sale deed dated 10.10.2000 which has been challenged in the present suit nor is he seeking possession. A perusal of para 5 of the plaint shows that a specific averment had been made that the defendant-petitioner had tried to interfere in the peaceful possession of the plaintiff-respondent No.1.

11. Hon’ble Supreme Court in case of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors. [2010 (12) SCC 112]** has held as under :

“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in

regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7."

12. Third submission of the learned counsel for the defendant No.2-

petitioner that no cause of action is made out and that the cause of action is illusory cannot be accepted in view of the specific averment in the plaint. Learned counsel for the defendant No.2-petitioner has not been able to convince this Court that no cause of action is made out on a meaningful reading of the plaint.

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

07.03.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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