



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-3711-2017 (O&M)

Date of decision: 18.05.2026

Mohlar (deceased) through his LRs

...Petitioner(s)

Vs.

Karan Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sudhir Aggarwal, Advocate with
Mr. Ishan Aggarwal, Advocate
for the petitioner.

Mr. Rakesh Dhiman, Advocate
for the respondents.

NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by LRs of defendant No.2 laying challenge to the order dated 2.05.2017 (Annexure P-4) passed by learned Civil Judge (Junior Division), Gurugram; whereby application filed by the petitioners under Order 7 Rule 11 CPC, has been dismissed.

2. Brief facts of the case in chronological order are as follows: -

03.12.2015: Plaintiff/respondent No.1 had filed a Civil Suit dated 03.12.2015 (Annexure P-1) for declaration and permanent injunction.

28.04.2016: LRs of defendant No.2 had filed instant application dated 28.04.2016 (Annexure P-2) under Order 7 Rule 11 CPC for rejection of the plaint on two grounds - being res judicata and limitation.



15.07.2016: Plaintiff had filed reply dated 15.07.2016 (Annexure P-3) to the said application of petitioner/LRs of defendant No.2.

02.05.2017: Vide impugned order dated 02.05.2017 (Annexure P-4), application of the petitioners has been dismissed.

3. Hence, present Revision Petition.

4. It is *inter alia* submitted by learned counsel for the petitioners/LRs of defendant No.2 that learned Trial Court was in patent error in dismissing application of the petitioners as petitioners had clearly demonstrated that the respondent/plaintiff was well aware of the impugned Sale Deed dated 30.05.1992 executed by Ram Parshad in favour of the petitioners. Yet, the instant suit was filed only on 03.12.2015. Clearly, therefore, suit of the plaintiff is barred by limitation.

5. It is further submitted that the plaintiff has admitted in the plaint itself that the petitioner had previously filed a declaration suit against the respondent, which came to be decreed vide concurrent judgments and decrees of the learned District Courts. Thus, Petitioner had demonstrated from the plaint that the civil suit is barred by res judicata as well as limitation. However, the learned Civil Judge has failed to appreciate these facts.

6. It is accordingly prayed that the present Revision Petition be allowed; and the impugned order be set aside.

7. *Per contra*, learned counsel for respondent No.1/plaintiff counters submissions of the petitioner by submitting that the previous



suit had been filed by the petitioner only for permanent injunction; whereas the present suit has been filed by the respondent for declaration alongwith consequential relief of permanent injunction. It is submitted that no doubt, respondent was aware of the Sale Deed dated 30.05.1992 executed by Ram Parshad in favour of the petitioner however, part of the suit land was also sold to the respondent. Moreover, respondent has also pleaded that the said Sale Deed was fraudulently and illegally executed by Ram Parshad without any right, title or interest in the suit property. It is submitted that therefore, both the said issues are mixed questions of fact and law. Therefore, the impugned order suffers from no error. He accordingly prays that the present Revision Petition be dismissed.

8. No other argument is raised on behalf of the parties. I have heard Id. counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of learned counsel for the petitioner.

9. The respondent in the plaint particularly in para 5 thereof has admitted filing of previous civil suit for permanent injunction by the petitioner against the respondent. The relevant paras 5 and 6 of the plaint read as under: -

“5. That since the date of purchase of the suit property the plaintiff and his brothers are coming owners in possession of the suit property i.e. 624 sq.yds. That the defendant No.2 had filed a declaration suit against the plaintiff and in the appeal before the Hon'ble High Court Punjab and Haryana, they have prayed to demarcation of the suit property and the Sub-Registrar of Gurgaon had submitted the demarcation report



of the suit property before the Hon'ble High Court and according to the demarcation, the land of the plaintiff was measured 458 Sq. Yards as constructed house of the plaintiff recently. While during the consolidation in the year 1964-1965, the area of the houses of the plaintiff was shown only 11 Marla i.e. 330 Sq. Yards. That the plaintiff No.2 has challenged the suit property Marked by Letter ABCD, shown in red colour as per site plan marked letter by AEFG, which area comes in the house of the plaintiff and the plaintiff has constructed pucca houses and temporary four wall and a bathroom and fixed a temporary gate. That the remaining suit property was never given to defendant No.1 namely Ram Prasad nor any other person till today during consolidation in the year of 1964-65 in the Village Garuli Khurd and no number was ear -marked separately and no allotment was made by the Consolidation Officer to anyone, as per Revenue Record and Abadi Deh in favour of the defendant No. 1 Ram Prasad or his ancestors or in the name of any one. Till today. So therefore, the Defendant No.1 has not right and title to sold the land adjacent or from the land of plaintiff to the defendant No.2 namely Mohlar (now deceased) through his LRs as per law.

6. That the defendant No. 2 Mohlar (since deceased) had purchased the land measuring 67 sq.yds. bearing Sale Deed Vasika No. 1445 dated 30.05.1992 from Sh. Ram Parsad adopted son of Sh. Daulta Ram, while the said Ram Pasad was neither owner nor in possession of the suit property at that time. While the said land measuring i.e. 4 Biswa 3 Biswansi comprising in Khasra No. 330 was purchased by the plaintiff's father and his two brothers.”



10. Thus, as respondent has made reference to the previous Civil Suit and impugned sale dated 30.5.1992, in paras 5 and 6 of the present plaint (Annexures P-1), therefore, it is clear that respondent was well aware of filing of the previous suit; as also the impugned sale dated 30.5.1992. Yet, Sale Deed dated 30.05.1992 has been challenged by the respondent only in the present Civil Suit filed on 03.12.2015. Thus, from the averments made in the plaint itself, it is clear that the suit of the plaintiff/respondent No.1 is barred by res judicata as well as limitation.

11. Moreover, previous civil suit filed by the petitioner for permanent injunction was decreed in favour of the petitioner vide concurrent judgments and decrees. The learned Additional District Judge, Gurugram vide judgment and decree dated 07.09.2004 (Annexure P-5), held as follows: -

“8. Mohlar made his statement on oath as PW1 in a suit No. 278 of 1996/92 filed by him against Surta and deposed that he is the owner of the suit plot which is in abadi of village Garauli Khurd and the same was purchased by him for a sale consideration of Rs. 5000/- vide registered sale deed dated 29.5.1992 mark 'A' (also Ex. PW3/A). He further deposed that the suit plot was consisting of one room. He deposed that Surta had no connection with the plot in question. He also stated Khasra number of the plot in question as 30. It has also come in the statement of Molhar that the possession was delivered by the seller Zile Singh was also examined in a suit filed by Molhar against Surta as PW3 who was then panch of Gram Panchayat Garauli. Zile Singh is a witness of sale deed Ex.



PW3/A. According to the testimony of Zile Singh the plot in question was purchased by Molhar from Ram Parshad two years ago and registered sale deed was executed which was signed and thumb marked by all the concerned after admitting the contents to be correct. Zile Singh further deposed that he and Rameshwar also witnessed the sale deed. Puran Chand witness as PW2 in a suit filed by Molhar against Surta was examined who deposed that Ram Parshad was taken in adoption by Daulta who was the original owner of the property in question. He also produced the record of village Garauli Khurd, in this regard. He stated that the entries regarding adoption were made by his father whose handwriting and signatures he could identify because he had seen his father writing and signing. The photocopy Ex. PW2/2 as contended is in Paali language in this regard and Hindi version of the same is available at mark 'B'. Amar Singh examined as PW3 in the case filed by Karan Singh admitted the factum of adoption of Ram Parshad by Daulta. Meaning - thereby the adoption was admitted by the witness of Karan Singh. So, sale in favour of Mohlar is justified. It was thus a legal sale."

12. Reasoning of the learned Civil Judge (Junior Division), Gurugram in the impugned order dated 02.05.2017 (Annexure P-4) is cryptic to the effect that *"on the ground of fraud which can only be dwelled after adducing of evidence by both the parties. The case is at initial stage and without the evidence led by either of the party, it cannot be said that the suit of plaintiff is barred by resjudicata and limitation."* In holding as above, the learned trial court has ignored the admissions and averments made by the respondent in the plaint itself. It is my view that

it was incumbent upon the trial court to first consider the preliminary issues of res judicata and limitation. Once the Court is satisfied on the said preliminary issues, only then question of adjudication of fraud alleged by the plaintiff, would arise. Moreover, no valid reason, in fact, no reason whatsoever has been given by the plaintiff for the delay in filing the civil suit.

13. As such, in view of the discussion hereinabove, this Revision Petition is **allowed**; and impugned order dated 02.05.2017 (Annexure P-4)) is set aside; and the suit of the plaintiff is rejected being barred by res judicata as well as limitation.

14. Pending application(s) if any also stand(s) disposed of.

18.05.2026

Divyanshi

Whether speaking/reasoned:
Whether reportable:

(NIDHI GUPTA)

JUDGE

Yes/No
Yes/No