

2026:PHHC:027174



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

**CR-558-2024 (O&M)
Decided on:-19.02.2026**

M/s Utkarsh Realtech Pvt. Ltd.

....Petitioner..

vs.

Ram Devi and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Adarsh Jain, Senior Advocate with
Ms. Kamaldeep Kaur, Advocate and
Ms. Amandeep Kaur, Advocate for the petitioner.

Mr. Ram Kumar Saini, Advocate,
Mr. Ankit Saini, Advocate and
Ms. Ruby Gupta, Advocate for respondent No.3.

HARKESH MANUJA J. (Oral)

1. By way of present revision petition, challenge has been laid to an order dated 23.11.2023 passed by the Court of learned Civil Judge (Junior Division), Gurugram, whereby an application preferred at the instance of petitioner-defendant No.4 for treating the issues of limitation and Land Court fee as the preliminary issues stands declined.

2. In the facts and circumstances of the present case, a suit for declaration and mandatory injunction came to be filed on behalf of respondents No.1 to 3 being plaintiffs, seeking a declaration with respect to the estate left by their deceased-father Karam Chand, while claiming

themselves to be his daughters. In the suit, it was pleaded that the property in the hands of deceased-Karam Chand was ancestral in nature and respondents No.1 to 3-plaintiffs being coparceners were having right, title and interest therein. On the other hand, it was pleaded on behalf of petitioner-defendant No.4 that after the death of Karam Chand on 02.10.2007, the suit property devolved upon his three sons i.e. respondents No.4 to 6 herein on the basis of registered Will dated 06.02.2006, followed by a mutation entered in their names on 29.01.2008. It was further pleaded that based thereupon, the petitioner-defendant No.4 purchased the subject property by virtue of registered sale deed dated 23.02.2010 from respondents No.4 to 6 followed by delivery of possession and mutation was entered in its name on 12.03.2010, whereas, the suit was filed on 20.10.2018.

2.1 Upon appearance in the suit, the petitioner-defendant No.4 filed an application under Order 7 Rule 11 CPC, with a prayer for rejection of the plaint on the ground that the suit was barred by limitation as well as for want of affixation of requisite Court Fee. The said application was rejected by the learned Trial Court vide order dated 24.11.2022. The order dated 24.11.2022 was assailed before this Court by way of Civil Revision No.1714 of 2023, however, the same was disposed of vide order dated 20.03.2023, which reads as under:-

“After arguing for some, learned counsel for the petitioner submits that the petitioner be allowed to withdraw the present petition with liberty to take all the objections including the liberty to file appropriate application before the trial Court to consider the issue on limitation as preliminary issue.

Ordered accordingly.”

3. In the meanwhile, based on the pleadings of the respective parties,

the following issues were framed by the learned Civil Judge (Junior Division), Gurugram on 19.01.2023:-

“Replication is not file by the plaintiff despite opportunity. Pleadings are complete. Following issues are settled for adjudication:

1. *Whether father of the plaintiffs namely Karam Chand was is exclusive owner of the suit property detailed in para No.2 of the plaint? OPP*
2. *If issue No.1 is proved in affirmative, whether the plaintiffs are entitled to declaration that Will No.446 dated 06.02.2006 executed by him is forged and invalid? OPP*
3. *Subject to findings on issue No.2, whether the plaintiffs are entitled to declaration that sale deed No.24017 dated 23.02.2010 and its mutation is illegal and invalid? OPP*
4. *Whether the plaintiffs are entitled to declaration of their ownership on the basis of inheritance? OPP*
5. *Whether the plaintiffs have no cause of action to file the present suit? OPD*
6. *Whether the suit is not maintainable? OPD*
7. *Whether the suit is barred by limitation? OPD*
8. *What relief?*

No other issues arises or pressed for. List of witnesses be filed and PF/DM be deposited within two weeks positively.

List on 18.04.2023 for Pws.

VIKRANT
UID No.HR0385
CJ (JD), Gurugram,
19.01.2023”

4. The petitioner thereafter moved an application for treating the issue No.7 as the preliminary issue. The said prayer was declined by the learned Trial Court vide order dated 23.11.2023.

5. By way of present revision petition, the order dated 23.11.2023 has been impugned.

6. I have heard learned counsel for the parties and gone through the paper book.

7. In view of the averments made in para 6 of the plaint, wherein, a specific plea has been raised that the suit property in the hands of deceased-father was ancestral in nature and respondents No.1 to 3/plaintiffs being *coparceners* have a right in the same; the adjudication upon the nature of the subject property besides respondents No.1 to 3-plaintiffs being *coparceners* or not is required to be dealt with at the first instance before deciding the issue of limitation. Para 6 of the plaint, being relevant is extracted hereunder:-

“That the share of plaintiffs was illegally and with malafide intention got transferred by defendants number 1 to 3 in their name vide forged Will alleged to be registered vide forged vasika number 446 dated 6th of February 2006 entered in the Rapat Rojnamcha no.203 dated 02.01.2007-08 and consequently an illegal mutation no.3487 dated 29.01.2008 was entered despite the fact that the suit property was ancestral in its nature and the alleged forged Will would not affect the legal rights of the plaintiffs being coparceners in the suit property. Moreover, it is relevant to mention here that no Will was registered in favour of defendants No.1 to 3 in the office of Sub Registrar Gurugram vide vasika No.446 dated 06.02.2006. The copy of Rapat Roznamcha and the mutation of inheritance which is attached herewith for the perusal of the honourable court.”

8. In the given facts and circumstances, the findings with respect to the nature of the suit property being ancestral besides respondents no.1 to 3-plaintiffs being *coparceners* or not, would have a direct bearing upon the

adjudication of the issue of limitation in the wake of Articles 109 and 110 of Schedule to the Limitation Act, 1963. The same being relevant are reproduced hereunder:-

	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
109	By a Hindu governed by Mitakshara law to set aside his father’s alienation of ancestral property.	Twelve years.	When the alienee takes possession of the property.
110	By a person excluded from a joint family property to enforce a right to share therein.	Twelve years.	When the exclusion becomes known to the plaintiff.

As such, it would be essential to permit the parties to lead their evidence in one go on all the issues rather than treating the issue of limitation or even the Court fee as the preliminary issue and holding a mini trial at this stage of the suit in the matter. Thus, it would be debatable in the given facts as to whether the limitation for filing the suit would be three years as submitted by the petitioner by placing reliance upon Articles 58/59 of the above Schedule or it would be governed by Articles 109/110 thereof in case the plaintiffs are able to prove themselves to be coparceners besides the suit property in the hands of their father to be of ancestral nature.

9. In view of the above, finding no merit in the present petition, the same is dismissed. However, nothing said herein shall be treated as an expression of opinion on the merits of the main suit while deciding the issue of limitation.

10. Pending applications, if any, also stand disposed of.

19.02.2026

sonika

Whether speaking/reasoned: Yes

Whether reportable: Yes

(HARKESH MANUJA)

JUDGE