



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

125

CR-2735-2025

Date of Decision: 06.05.2025

Raghubir Singh

....Petitioner

Versus

Darbara Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. KS Sidhu, Senior Advocate with
Mr. PS Sullar, Advocate for the petitioner.

NIDHI GUPTA, J.

1. The present Civil Revision Petition has been filed by the defendant under Article 227 of the Constitution of India, for setting aside the impugned order dated 18.07.2024 (Annexure P-4) passed by the learned Additional Civil Judge (Senior Division), SAS Nagar, vide which the application filed by the petitioner under Order VII Rule 11 CPC for rejection of plaint, has been dismissed.

2. Learned counsel for the petitioner, *inter alia*, submits that respondents No. 1 to 5/plaintiffs had filed a Civil Suit No. 641 of 2021 (Annexure P-1), for declaration in respect of inheritance of Punjaba S/o Biru. The plaintiffs had laid challenge to the mutation sanctioned in favour of Attru/ brother of Punjaba by claiming themselves to be the descendents of Nihali d/o Punjaba Wd/o Puran Singh. It is submitted that it was the own case of the plaintiffs that Mutation No. 107 dated 29.03.1926 was sanctioned in the name of Attru as per Customary Law. Thus, plaintiffs had admitted claim of the petitioner; and therefore, did not disclose any cause of action in their favour. It was contended that Nihali



being daughter of Punjaba, as per Customary Law prevalent at that time was not entitled to inherit the property of her father; and in the absence of sons and other legal heirs the property was to go to collaterals by way of succession. It is submitted that it was also the admitted case of the parties that Attru was the brother of Punjaba and Punjaba predeceased Attru, therefore, the inheritance passed to Attru upon the death of Punjaba; and, therefore, Nihali being daughter of Punjaba has no right in the same. On the other hand, the petitioner and respondents No. 6 to 9 are successors of Attru. Therefore, they succeeded to the inheritance of Punjaba; whereas plaintiffs being descendant of Nihali have no right to succeed, as per Customary Law.

3. It is submitted that the challenge in the suit is to the mutation of the year 1926; whereas the suit has been filed by respondents No. 1 to 5-plaintiffs in the year 2021 i.e. after a delay of about 94 years. Accordingly, petitioner had sought rejection of plaint. However, application of the petitioner has been wrongly dismissed vide the impugned order.

4. No other argument has been raised by learned counsel for the petitioner.

5. I have heard learned counsel and perused the case file in great detail.

6. I find no merit whatsoever in the submissions advanced by learned counsel for the petitioner. From the bare reading of the above facts, it is clear that in order to test the veracity of the rival stands of the parties, evidence would have to be led. It is established position that in an application under Order VII Rule 11 CPC, only the averments made in the



plaint have to be considered. The questions whether or not any cause of action is disclosed in the plaint; and whether or not any Customary Law was applicable at the relevant time; etc. can be ascertained only by way of leading cogent and convincing evidence. Even the question of limitation is a mixed question of facts and law and would require evidence.

7. It is an established position in law that at the stage of deciding an application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen. The Hon'ble Supreme Court in numerous judgments including *Eldeco Housing and Industries Ltd. Vs. Ashok Vidyarthi & Others, Law Finder Doc ID # 2406865*, has repeatedly held that no evidence or merits of the controversy can be examined at the stage of deciding rejection of a plaint in an application under Order 7 Rule 11 CPC; and only the averments made in the plaint would be relevant for invoking Order 7 Rule 11 CPC. In *Kamala & Others Vs. K.T. Eshwara Sa & Others, 2008 (12) SCC 661*, it is held that in an application under Order 7 Rule 11 CPC, no evidence can be looked into; issue on merits of the matter would not be within the realm of the Court at that stage; and the Court would not decide any evidence or disputed question of fact or law. Reference may also be made to three-Judge Bench judgment of Hon'ble Supreme Court in *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Others, Law Finder Doc ID # 1865777*, wherein it has been categorically held that “...In order to reject a plaint for the suit being barred by any law under Order 7 Rule 11(d), the court needs to be guided by the averments in the plaint and not the defence taken.” It has been categorically held that the grounds taken by the defendant as defence cannot be taken into account



while rejecting a plaint under Order 7 Rule 11 CPC. Relevant part of the said judgment is as under:-

“16. Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected "where the suit appears from the statement in the plaint to be barred by any law". Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case....”

8. Clearly, therefore, for invoking Clause (d) of Order 7 Rule 11 CPC, only the averments made in the plaint are relevant; and for that purpose there cannot be any addition or subtraction; averments in the written statement are immaterial; and it is the duty of the Court to scrutinize the pleas in the plaint and the matter is to be decided only on the plaint averments. Moreover, limitation is a mixed question of law and fact and would require evidence.

9. In view of the above, present petition is **dismissed**.

10. Pending application(s), if any, shall also stand disposed of.

06.05.2025
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No