



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CR No.3585 of 2022 (O&M)
Reserved on : 04.02.2025
Pronounced on: 20.02.2025

Baljeet and others

...Petitioners

V/s

Prem Chand and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Rajat Khanna, Advocate and
Mr. Vijay Pratap Singh, Advocate, for the petitioners.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate, for respondents No.1 to 4.

VIKRAM AGGARWAL, J

The present revision petition is directed against the order dated 27.05.2022 passed by the Court of learned Civil Judge (Jr. Divn.), Faridabad, vide which the application filed by the defendants (except defendant No.7) under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short the "CPC") for rejection of plaint was dismissed.

2. The facts, as emanating from the revision petition, are that the plaintiffs (Prem Chand, Bijender, Smt. Sheela Devi and Smt. Sushila) (respondents No.1 to 4 herein) filed a suit for declaration and injunction seeking the following relief:-

"It is, therefore, prayed that a decree for declaration to the effect that plaintiffs are owners in possession as co-sharers of 1/4th share and that plaintiffs are also owners as co-sharers of another 1/4th share and that defendants No.1 Baljeet, defendant No.4 - Mahipal and defendant No.9 Sri Pal are lessee in possession of 1/4th share under the plaintiffs in

the total land measuring 1254 Kanals 4 Marlas as detailed & described in para No.1 of the plaint and that mutation No.2 of village Tajpur regarding inheritance of said Govinda as sanctioned on 26.07.1927 and lease deed for 99 years dated 04.01.1960 bearing Vasika No.27 dated 05.01.1960 executed by Smt. Baldal exceeding her 1/4th share in the abovesaid land and its mutation No.3 of village Tajpur as sanctioned on 26.02.1963 exceeding 1/4th share of Smt. Baldai and mutation No.20 of village Tajpur regarding inheritance of Smt. Baldai on the basis of false and frivolous Will dated 08.10.1980 as sanctioned on 23.11.1987 and entries in the revenue record on the basis of said mutations in favour of the defendants are totally wrong, illegal, null & void and do not create any right, title and interest in favour of the defendants and are not binding upon the plaintiffs and a decree for permanent injunction restraining the defendants from dispossessing the plaintiffs from their 1/4th share in the said suit land and also from alienating ½ share of the plaintiffs in the said suit land as detailed and described in para No.1 of the plaint may kindly be passed in favour of the plaintiffs and against the defendants alongwith costs of the suit.

Or any other relief which this Hon'ble court deems fit and proper may also be awarded in favour of the plaintiffs.”

3. The suit was opposed by the defendants by way of written statement (Annexure P-2).

4 During the pendency of the suit, an application (Annexure P-3) was moved under Order 7 Rule 11 CPC for the rejection of plaint on the ground that Smt. Baldei had expired on 25.10.1983 and her daughter Smt. Kailash died on 14.01.2003 and she had never challenged Mutation No.2 sanctioned on 26.07.1927 during her lifetime. The plaint was also sought to be rejected on the ground that the suit was barred by limitation as it laid challenge to the lease deed dated 04.01.1960 and Mutation No.20 dated 23.11.1987 sanctioned in accordance with Will dated 08.10.1980. It was stated in the application that the plaintiffs had no cause of action to file the suit as they were not claiming inheritance directly in the property left behind by Sh. Govinda but were claiming their share through her mother, who had never challenged the aforestated transactions during her lifetime. As such it

was averred that the plaintiffs had no cause of action and the suit was barred by limitation.

5. The application was opposed by way of reply (Annexure P-4), stating that the application was not maintainable and had been filed with a view to delay the proceedings. As regards limitation, it was averred that it is a mixed question of facts and law and, therefore, the plaint could not be rejected on the said ground. It was further averred that cause of action had accrued to the plaintiffs, when on the basis of wrong and illegal mutations and illegal entries in the revenue record, the defendants had obtained compensation of Rabi crops 2015, which had been destroyed due to heavy rain and hailstorms in June 2016 and when the defendants threatened to take forcible possession of the land of the plaintiffs. It was averred that the plaintiffs were in possession of the suit land. It was further averred that the suit would be filed only when there was a threat to the title of the plaintiffs and the suit was, therefore, within limitation. It was further averred that there was no limitation prescribed for filing a suit based on inheritance. By way of the impugned order, the said application was rejected leading to the filing of the present revision petition.

6. Learned counsel for the parties were heard.

7. Learned Senior Counsel representing the petitioners referred to the prayer in the civil suit and then the application for rejection of plaint and specifically Paras 3 to 5 thereof. He then referred to the impugned order and submitted that there is no finding as regards cause of action and that the only issue discussed by the Court concerned is the issue of limitation. Learned Senior Counsel submitted that on this ground alone, the impugned order deserves to be set aside and the matter deserves to be remanded to the Court concerned for a fresh decision on the application for rejection of plaint.

8. As regards limitation, it was contended that the suit is clearly barred by limitation. Reference was made to the contents of the plaint and it was submitted that clever drafting would not bring the suit within limitation. Learned Senior Counsel submitted that under no circumstance could the suit have been permitted to continue and it deserved rejection at the very threshold. In support of his contentions reliance was placed upon:

1. ***C.S. Ramaswamy vs. V.K. Senthil and others, 2022(4) RCR (Civil) 426;***
2. ***Dahiben vs. Arvindhbai Kalyanji Bhanusali (Gajra) (D) Thr LRs & Ors, 2020(3) RCR (Civil) 98;***
3. ***Ramisetty Venkatanna & Anr. Vs. Nasyam Jamal Saheb & Ors, 2023 (2) ACR (Civil) 287;***
4. ***K. Akbar Ali vs. K. Umar Khan & Ors, 2021 (2) RCR (Civil) 287;***
5. ***T. Arivandandam vs. T.V. Satyapal, (1997)4 SCC 467;***
6. ***Manju vs. Smt. Kailashwati & Ors, 2014 (39) RCR (Civil) 206 and***
7. ***B.R. Solvex Pvt. Ltd. & Anr. Vs. RSA Trading Company, 2019 (1) RCR (Civil) 250.***

9. *Per contra*, learned Senior Counsel representing the respondents submitted that there is no illegality or infirmity in the impugned order warranting interference in revisional jurisdiction. Learned Senior Counsel referred to the impugned order in detail and submitted that all aspects were duly considered by the Court concerned and the application for rejection of plaint was rightly dismissed. Learned Senior Counsel submitted that evidence would be required to be led to prove the averments made in the suit and the same cannot be dismissed at the threshold. As regards cause of action, it was submitted that the learned trial Court duly touched upon the same and in a way held that the plaintiffs had the cause of action to file the suit. He submitted that it was a suit for declaration on the basis of inheritance/title and, therefore, there would be no limitation to file the same. Learned Senior

Counsel also pointed out that the father of the defendants was the Lambardar of the village and had, therefore, been instrumental in fraudulently getting the deeds etc. under challenge executed. He submitted that the impugned order is perfectly legal and valid and no interference is called for. In support of his contentions, learned Senior Counsel referred to:-

1. ***Vaish Aggarwal Panchayat vs. Inder Kumar and others, 2015(4) RCR (Civil) 167;***
2. ***United India Insurance Company Limited vs. Rajendra Singh and others etc., 2002(2) RCR (Civil) 483;***
3. ***Jaishree Jain vs. Anand Sarup Bhardwaj and Ors., Law Finder Doc ID # 2122462.***
4. ***Punjab Merchantile Bank, Ltd. vs. Kishan Singh and another, 1963 PLR 67.***

10. I have considered the submissions made by learned Senior counsel representing the parties.

11. Before advertng to the merits of the case, it would be apposite to examine the principles that are required to be kept in mind while dealing with an application moved under Order 07 Rule 11 CPC. It is settled law that for rejection of plaint, only the contents of the plaint have to be looked into and the material produced by the petitioner-defendant, be it in the reply to the application for rejection of plaint or otherwise is not to be considered. Reference can be made to the judgment in the case of '***Kuldeep Singh Pathania Vs. Bikram Singh Jaryal***', 2017 AIR SC 593. In this judgment, the Supreme Court of India referred to various other decisions upon the same point.

12. As regards the issue of limitation, the law is well settled that limitation is not a pure question of law and, therefore, a plaint cannot be rejected on the ground of limitation alone. Reference can be made to the judgment in the case of '***M/s Mongia Realty and Buildwell Private Limited***

Vs. Manik Sethi, 2022 (11) SCC 572. Reliance in this judgment was placed upon the judgment of the Supreme Court of India in the case of '*Salim D. Agboatwala and Others Vs. Shamalji Oddhavji Thakkar and Others*', 2021 AIR (SC) 5212. No doubt, recently the Supreme Court of India has held in the case of *C.S. Ramaswamy Vs. V.K. Senthil and Others*' (supra) that plaintiffs cannot be permitted to bring suits within the period of limitation by clever drafting which otherwise are barred by limitation. There is absolutely no dispute in the said ratio of law laid down by the Supreme Court of India which is even otherwise settled law. If the suit, on the face of it, from the averments of the plaint appears to be barred by limitation, the same is not required to be continued only the ground that limitation is not a pure question of law. The Supreme Court of India observed as under:

"7.8 Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the respondents - original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word "fraud", the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation. At this stage, a recent decision of this Court in the case of Raghwendra Sharan Singh (supra) is required to be referred to. In the said decision, this Court had occasion to consider all earlier decisions on exercise of powers under Order VII Rule 11 CPC, which are considered by this Court in paragraphs 6.4 to 6.9 as under:-

"6.4. In *T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467]*, while considering the very same

provision i.e. Order 7 Rule 11 CPC and the decree of the trial court in considering such application, this Court in para 5 has observed and held as under: (SCC p. 470)

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."

6.5. In Church of Christ Charitable Trust & Educational Charitable Society [Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706], this Court in para 13 has observed and held as under: (SCC p. 715)

"13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

6.6. In ABC Laminart (P) Ltd. v. A.P. Agencies [(1989) 2 SCC 163], this Court explained the meaning of "cause of action" as follows: (SCC p. 170, para 12)

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the

actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

6.7. *In Sopan Sukhdeo Sable [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] in paras 11 and 12, this Court has observed as under: (SCC p. 146)*

"11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)"

6.8. *In Madanuri Sri Rama Chandra Murthy [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174], this Court has observed and held as under: (SCC pp. 178- 79, para 7)*

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be

strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

6.9. In Ram Singh [Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364], this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation."

7.9 Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order VII Rule 11 CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the Courts below have materially erred in not rejecting the plaints in exercise of powers under Order VII Rule 11(d) CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (supra) and other decision of Raghwendra Sharan Singh (supra), and as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 CPC.

A similar view was taken by the Supreme Court of India in the case of '***Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) Thr LRs & Ors***' (supra).

13. Reverting to the facts of the present case, the application for rejection of plaint was filed primarily on two grounds viz there being no cause of action for filing the suit and the suit being barred by limitation. As regards cause of action, though it is the vehement contention of learned Senior counsel representing the petitioners that no finding was recorded and, therefore, the matter needs to be remitted to the trial Court for a fresh decision of the application, I do not concur with the same. It is true that in so many words, the impugned order does say that the plaintiffs had the cause of action to file the suit. However, if we read the order carefully, it notices that the plaintiffs had leveled allegations of fraud and collusion and further it was the case of the plaintiffs that they are in possession of the suit land. It was found that the issue of possession and fraud could be settled only after leading evidence. The trial Court, therefore, did hold, though indirectly, that cause of action to file the suit was available to the plaintiffs.

14. Coming to the issue of limitation, the trial Court only held that since it is a mixed question of law and facts, the plaint cannot be rejected on this ground. This view shall have to be tested keeping in view the judgment of the Supreme Court in the case of '***C.S. Ramaswamy vs. V.K. Senthil and others***' (supra) and the provisions of Order 07 Rule 11 (D). In the case of '***C.S. Ramaswamy vs. V.K. Senthil and others***' (supra), challenge was to the sale deed executed by the plaintiffs themselves. There was only a reference of fraud having been played but no details of the fraud were given. Further, after having executed the sale deed, the plaintiffs remained silent for a period of 10 years. It was under these circumstances that the Supreme Court held that the suit was clearly barred by limitation and, therefore, the plaint deserved to be

rejected. Coming to the present case, no doubt the plaint (Annexure P-1), at the first blush, appears to be barred by limitation, for, it talks of the death of one Govinda in June 1927, and prays for setting aside of mutation dated 26.07.1927, challenges the lease deed dated 04.01.1960 and entries on the basis of a Will dated 08.10.1980, sanctioned on 23.11.1987. However, if we closely look at the plaint, the plaintiffs clearly claim that they are in possession of the suit land and that they came to know about the mutations etc. when the defendants got the compensation for the damage to the crops in 2015. It is also their case that the plaintiffs and their predecessors in interest continue to be in cultivating possession of the suit land as per their share. It is also their case that one Mohar Singh, Lambardar, father of defendants No.1 to 3, had in collusion with the revenue authority got the mutations etc. sanctioned. This would have to be proved by leading evidence. Further, as to whether the plaintiffs are in possession of the suit land would also have to be proved by leading evidence. Under the circumstances, where there are so many things to be determined, it cannot, under any circumstance, be said that the suit is clearly barred by limitation and on account of the same, the plaint would have to be rejected. The judgments in the case of '*C.S. Ramaswamy vs. V.K. Senthil and others*' (supra), '*Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) Thr LRs & Ors*' (supra) and '*Ramisetty Venkatanna & Anr. Vs. Nasyam Jamal Saheb & Ors*' (supra) would, therefore, not come to the aid of the petitioners. In the case of '*K. Akbar Ali vs. K. Umar Khan & Ors*' (supra), the Hon'ble Supreme Court held that the provisions of Order 07 Rule 11 CPC are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigants or not allowed to consume the time of the Court. It was held that clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. It was held that the Court also must see that the bar in law of the suit is not

camouflaged by devious and clever drafting of the plaint. There is absolutely no quarrel with the said proposition and vexatious and frivolous litigations deserve to be rejected at the threshold. However, where on one hand, there should be a clear cause of action in the plaint, the view that a litigation is vexatious or frivolous is also required to be clear and a plaint cannot be rejected on assumptions and presumptions. We are all conscious of the fact that Courts are flooded with litigations which includes frivolous litigation as well. It is time to deal firmly and sternly with frivolous litigation. However, as noticed above, there should be a firm finding that the litigation is frivolous or vexatious. In the present case, this Court does not find the suit to be the result of clever drafting or the same being a vexatious or frivolous litigation. For, this Court has held that the issue of cause of action was also discussed, the judgments in the case of '*Manju vs. Smt. Kailashwati & Ors*' (supra), and '*B.R. Solvex Pvt. Ltd. & Anr. Vs. RSA Trading Company*' (supra), where the matter was remitted to the trial Court on account of all issues not having been decided would not apply to the facts of the present case.

15. As an upshot of the discussion in the preceding paragraphs, this Court is of the considered opinion that there is no infirmity or illegality in the decision of the trial Court vide which the application for rejection of plaint was dismissed warranting interference by this Court.

In view of the aforementioned facts and circumstances, I do not find any merit in the revision petition and the same is accordingly dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 20.02.2025

Prince Chawla

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No