



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

CR-541-2022
DECIDED ON: 28.01.2025

JAGBIR SINGH

.....PETITIONER

VERSUS

ROSHNI AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Govind Chauhan, Advocate
for the petitioner.

Mr. Lekh Raj Nandal, Advocate
for respondent No.3.

VIKRAM AGGARWAL, J

The present revision petition preferred under Article 227 of the Constitution of India is directed against the order dated 06.12.2021 (Annexure P-8) passed by the Court of learned Civil Judge (Junior Division), Rohtak vide which the application filed by the petitioner-defendant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC') for rejection of plaint was dismissed.

2. The respondents-plaintiffs filed a suit for declaration that they were entitled to get their share in the ancestral property described in the plaint and that the Civil Court Decree dated 04.08.1993 (Annexure P-2) and subsequent entries in the revenue record were illegal, null and void. Consequential relief of permanent injunction restraining the petitioner-defendant from alienating the disputed land was also sought. The respondents-plaintiffs were the widow and daughter of one Randhir Singh whereas the petitioner-defendant Jagbir Singh is the father of Randhir Singh. Randhir Singh expired in 1999 after which the respondents-plaintiffs inherited



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the share of Randhir Singh from his ancestral/coparcenary property along with the petitioner-defendant. In April 2019, they approached the Patwari of the area for obtaining copies of the revenue record. It was at this point of time that they came to know that the petitioner-defendant had obtained a Civil Court Decree dated 04.08.1993 alleged to have been suffered by Randhir Singh in his favour, leading to the filing of the Civil Suit.

3. An application under Order 7 Rule 11 CPC (Annexure P-3) was filed by the petitioner-defendant for rejection of plaint primarily on the ground of limitation stating that the decree had been passed in favour of the petitioner-defendant in 1993 whereas the suit had been filed in the year 2019 i.e 26 years after the passing of the decree.

4. The application was opposed by way of a reply in which it was averred that the suit was not barred by limitation as the respondents-plaintiffs were not having knowledge of the alleged decree.

5. By way of the impugned order dated 06.12.2021 (Annexure P-8), the application for rejection of plaint has been dismissed, leading to the filing of the present revision petition.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner submits that the impugned order is not sustainable. He submits that the plaint was the result of clever drafting and under the circumstances, it was for the Court to lift the veil. Learned counsel submits that limitation cannot be stated to be a mixed question of facts and law and that very recently, the Supreme Court of India has held that a plaint can also be rejected if the suit is clearly barred by limitation. He submits that under the circumstances, the impugned order deserves to be set aside and the application filed by the petitioner-defendant



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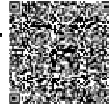
for rejection of the plaint deserves to be allowed. In support of his contentions, he places reliance upon the judgments passed by the Supreme Court of India in the case of '*C.S. Ramaswamy Vs. V.K. Senthil and Others*', 2022 (4) RCR (Civil) 426, '*Ramisetty Venkatanna and Another Vs. Nasyam Jarnal Saheb and Others*', 2023 (2) Law Herald (SC) 1005, '*Shri Mukund Bhavan Trust and Others Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another*', 2024 INSC 1025 and '*Indian Evangelical Lutheran Church Trust Association Vs. Sri Bala and Co.*', 2025 INSC 42.

8. On the other hand, learned counsel for respondent No.3 submits that there is no illegality in the impugned order warranting interference. He submits that the respondents-plaintiffs did not have any knowledge about the decree and it is only when they came to know about the same in the year 2019, they immediately filed the suit. He submits that under the circumstances, the plaint could not have been rejected and the application was, therefore, rightly dismissed by the trial Court.

9. I have considered the submissions made by learned counsel for the parties.

10. 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.

11. As regards the issue of limitation, the law is well settled that



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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 other judgments relied upon by learned counsel for the petitioner do not call for any reference, they being on different issues. However, in the present case, it has duly been averred in the plaint that the widow and daughter of Randhir Singh were not aware about the decree and when they acquired knowledge about the same, they filed a suit. Under these circumstances, limitation will become a mixed question of facts and law.

12. If one applies the law on the subject to the facts of the present case, it becomes clear that there was no occasion for the trial Court to reject the plaint on the ground of limitation because from a reading of the plaint, it does not emerge that the suit was barred by limitation. On the contrary, there is a categorical averment in the suit that the respondents-plaintiffs were not aware about the decree having been suffered by Randhir Singh in favour of

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his father i.e. the petitioner-defendant. They have also taken the plea of fraud in the plaint which shall have to be proved by leading evidence and the plaint cannot be rejected at the threshold.

For the reasons aforementioned, I do not find any illegality in the order under challenge and, therefore, do not find any reason to interfere in the same. Accordingly, finding no merit in the present revision petition, the same is dismissed.

28.01.2025
Prince Chawla**(VIKRAM AGGARWAL)**
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No