

HIGH COURT OF PUNJAB AND HARYANA

BENCH : HON'BLE MRS. JUSTICE ALKA SARIN

Date of Decision: 03.04.2024

CR No.1946 of 2024

Radha Rani and Another ...Petitioners

VERSUS

Ranjna Rani ...Respondent

Legislation:

Order VII Rule 11 CPC

Article 54 of the Limitation Act, 1963

Subject: A petition challenging the order dismissing an application for rejection of the plaint in a case involving specific performance of an agreement to sell.

Headnotes:

Order VII Rule 11 CPC - Application for rejection of plaint - Limitation - Suit for specific performance of agreement to sell - Plaintiffs alleged extension of time for execution of sale deed and payment of additional consideration - Defendants contended suit barred by limitation - Plaint discloses extension of time and payment of consideration - Whether suit barred by limitation is a debatable question - Merits and demerits of matter not to be gone into at this stage - Averments in plaint to be considered - Suit not barred by limitation on a bare perusal of plaint - Application for rejection of plaint dismissed. [Paras 1-9]

Decision: Revision petition challenging the order dismissing the application for rejection of plaint is devoid of merits and accordingly dismissed. Pending applications, if any, also stand disposed of. [Para 9]

Referred Cases:

- Salim D. Agboatwala & Ors. Vs. Shamalji Oddhavji Thakkar & Ors. [AIR 2021 SC 5212]
- Chhotanben & Anr. Vs. Kiritbhai Jalkrushnabhai Thakkar & Ors. [2018(5) RCR (Civil) 163]
- Urvashiben & Anr. Vs. Krishnakant Manuprasad Trivedi [2019(1) RCR (Civil) 366]

Representing Advocates:

Mr. Namit Gautam for the petitioners.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the order dated 01.02.2024 whereby the application filed by the defendantpetitioners under Order VII Rule 11 CPC read with Article 54 of the Limitation Act, 1963 for rejection of the plaint has been dismissed.

2. The brief facts relevant to the present case are that the plaintiffrespondent filed the present suit seeking specific performance of the agreement to sell dated 04.08.2014 executed by defendant-petitioner No.1. It is the case set up by the plaintiff-respondent that the agreement to sell was executed by the defendant-petitioners for a sale consideration of Rs.12,00,000/- and an amount of Rs.4,00,000/- was received by the defendant-petitioners at the time of execution of the agreement to sell in question. The plaintiff-respondent further claimed that at the time of execution of the agreement to sell in question the defendant-petitioner No.2 was a minor and it was agreed between the parties that the defendantpetitioner No.1 would get an order from the Guardian Court in order to sell the property in question and accordingly the date for execution of the sale deed was fixed as 20.02.2015. The further case set up by the plaintiffrespondent was that the sale deed could not be executed on the date fixed as the defendant-petitioner No.1 failed to get the requisite permission from the Guardian Court and the date was accordingly extended. It was further the case set up that the date was extended from 20.02.2015 to 20.05.2015. Subsequently, on 07.11.2019

a further amount of Rs.4,00,000/- was paid by the plaintiff-respondent to the defendant-petitioners and the date for execution of the sale deed was extended upto 07.12.2020 and it was agreed that the remaining amount of Rs.4,00,000/- would be paid at the time of execution and registration of the sale deed. It was further the case that on 04.12.2020 the defendant-petitioner No.1 herein again showed her inability to execute and register the sale deed and extended the date to 07.05.2021 and an endorsement to this effect was also made on the backside of the stamp paper of the agreement to sell dated 04.08.2014. It is further the case of the plaintiff-respondent in the plaint that the plaintiff-respondent appeared before the concerned Sub-Registrar on 07.05.2021 and incurred all the ancillary charges, however, the defendant-petitioner No.1 did not turn up. The plaintiff-respondent also got her presence marked before the SubRegistrar. Hence, the present suit. The defendant-petitioners filed an application under Order VII Rule 11 CPC read with Section 54 of the Limitation Act, 1963 for rejection of the plaint. Reply was filed to the said application. Vide the impugned order dated 01.02.2024 the said application was dismissed.

3. Learned counsel for the defendant-petitioner would contend that the agreement to sell in the present case was admittedly executed on 04.08.2014 and hence the suit ought to have been filed within a period of three years. It is further the contention that even if the time is taken as to have been extended to 20.05.2015, as mentioned in para 8 of the plaint, even then the suit is barred by limitation.

4. Heard.

5. It is trite that while deciding the application under Order VII Rule 11 CPC only the contents of the plaint are to be seen. A meaningful reading of the plaint reveals that though it has been stated in para 8 that the time was extended to 20.05.2015 and an endorsement was made on the backside of the stamp-paper of the agreement to sell dated 04.08.2014 and there was

silence thereafter, however, in para 10 of the plaint it has been stated that on 07.11.2019 another sum of Rs.4,00,000/- was paid and the date for registration of the agreement to sell was extended upto 07.12.2020 and thereafter was again extended to 07.05.2021. On 07.05.2021 the plaintiff-respondent is stated to have appeared before Sub Registrar and also got her presence marked by executing an affidavit. It would be a debatable question as to whether there was any extension of time for execution of the sale deed as stated in para 10 and as to whether an amount of Rs. 4,00,000/- was paid by the plaintiff-respondent to the defendant-petitioner No.1 on 07.11.2019. At this stage, to go into the question as to whether the suit itself would be barred by limitation would not be proper inasmuch as on a bare perusal of the plaint it cannot be said that the suit was barred by limitation keeping in view the averments made in para 10.

6. Hon'ble Supreme Court in case of Salim D. Agboatwala & Ors. vs. Shamalji Oddhavji Thakkar & Ors. [AIR 2021 SC 5212] has held as under :

“10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasize that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”

7. In case of Chhotanben & Anr. vs. Kiritbhai Jalrushnabhai Thakkar & Ors. [2018(5) RCR (Civil) 163] the Supreme Court held as under :

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the

plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

8. Further in the case of *Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi* [2019(1) RCR (Civil) 366] it has been held as under : “15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave,

learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

9. In view of the above, I do not find any illegality or infirmity in the impugned order. The present revision petition being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.