

HIGH COURT OF PUNJAB AND HARYANA**Bench: Hon'ble Mr. Justice Gurbir Singh****Date of Decision: 9th May 2024**

Civil Revision No.684 of 2023

Arun Fotedar ...PETITIONER**VERSUS****Dr. Jitender Fotedar and another ...RESPONDENTS****Legislation and Rules:**

Article 227 of the Constitution of India

Order VII Rule 11, Section 151 of the Code of Civil Procedure (CPC), 1908

Article 58 of the Limitation Act

Section 4 of the Benami Transactions (Prohibition) Act, 1988

Section 34 of the Specific Relief Act, 1963

Subject: Challenge against the order of the Civil Judge dismissing a plea for rejection of the plaint regarding property ownership and construction funding disputes among brothers.

Headnotes:

Property Dispute Among Brothers – Challenge to the rejection of plaint – Petitioner Arun Fotedar challenges the order of the Civil Judge, which dismissed his application under Order VII Rule 11 CPC for rejection of the plaint filed by respondent Dr. Jitender Fotedar concerning the ownership and funding of the construction of family-owned properties – Trial court order upheld by High Court, finding no merit in the petitioner's arguments – All legal issues to be adjudicated during the trial – Revision petition dismissed [Paras 1-14].

Cause of Action & Limitation – Argument on limitation rejected – Plaintiff claimed cause of action arose upon learning of a transfer deed against his interests, discovered in 2020, well within the limitation period – Suit involves questions of oral promises and contributions acknowledged by defendant No.2 (another brother), creating a continuing cause of action [Para 16].

Value and Stamping of Suit – Suit properly valued and stamped – High Court confirmed that the plaintiff, being in joint possession as co-owner and disputing a transfer deed allegedly executed without his consent, rightly paid fixed court fees under applicable rules [Para 17].

Referred Cases:

- Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174
- Saleem Bhai and others v. State of Maharashtra and others, (2003) 1 SCC 557
- P.V. Guru Raj Reddy rep. by GPA Laxmi Narayan Reddy and another v. P. Neeradha Reddy and others, (2015) 8 SCC 331
- Suhrid Singh @ Sardool Singh v. Randhir Singh and others, 2010(12) SCC 112
- Salim D. Agboatwala v. Shamalji Oddhavji Thakkar, Civil Appeal No.5641 of 2021

Representing Advocates:

For the petitioner: Mr. V.K. Shali, Senior Advocate with Mr. Kuljit Singh

For the respondents: Mr. Sandeep Vermani and Mr. Aditya Vermani

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 20.10.2022 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurugram, whereby application moved by the petitioner-defendant No.1 under Order VII Rule 11 (a) (b) (c) (d) read with Section 151 CPC for rejection of the plaint, has been dismissed.
2. The parties herein are being addressed as per their original status in the suit. 2.1 The parties are real brothers. They are sons of Mr. M.L. Fotedar, who expired on 28.09.2017 leaving behind his widow, namely, Rattan Rani Fotedar; three sons, namely, Jitender Fotedar (plaintiff), Arun Fotedar (defendant No.1, petitioner herein), Sanjay Fotedar (defendant No.2); and two daughters, namely, Girija Dhar and Rashmi Shali.

2.2 In brief the facts necessary for the decision of this revision petition are that respondent No.1-plaintiff filed a suit for declaration, cancellation of transfer deed and for permanent injunction, on the ground that in 1999, he purchased the property bearing No.C-2/71-B, measuring approx. 416 square yards, situated at Lord Krishna Enclave Sushant Lok, Phase-1, Gurugram, from his own funds. Plot No.C-2/73, measuring approx. 416 square yards, in the said locality, was purchased in the name of Mrs. Rattan Rani, mother, who later on gifted the same to her younger son Sanjay Fotedar-defendant No.2 and thereafter, plot No.C-2/72, measuring 416 square yards, was also gifted to defendant No.2 by one Mr. M.L. Bajaj. For construction of plot Nos.C-2/72 and C-2/73 (hereinafter referred as, "suit property"), the funds were arranged by the plaintiff and his father. So, the plaintiff became co-owner of the suit property after the construction of basement, ground floor, first floor and second floor. Defendant No.2 started residing at ground floor, whereas first floor and second floor were owned by the plaintiff and he started residing at the first floor. Since the father of the parties desired that his sons should reside jointly in the said property during his lifetime and to fulfill said desire, defendant No.1 was given the right to reside at the second floor of the suit property. A residential flat at Dwarka was acquired in the name of defendant No.1 from the joint funds and huge industrial plot of land at Manesar and commercial property at Qutab Plaza, Phase-1 in the name of wife of defendant No.1. After the death of their father Mr. M.L. Fotedar, the family members kept on deliberating to partition the joint properties and plaintiff kept on asking defendant No.1 to shift to Dwarka and requested defendant No.2 to execute transfer deed in his favour. Defendant No.1 sent a mail to the plaintiff on 01.06.2020 wherein it was disclosed that defendant No.1 had got a transfer deed executed by defendant No.2 in respect of suit property and when defendant No.2 was confronted that he had no right as construction of suit property was carried out by the funds of plaintiff and transfer deed was to be executed in favour of the plaintiff, then defendant No.2 assured to get the said deed cancelled as the same had been obtained fraudulently by defendant No.2. In order to resolve the dispute, a family settlement was proposed and as such, another mail was sent by the husband of Mrs. Rashmi to the plaintiff on 10.06.2020 regarding settlement of suit property. On 31.05.2021, defendant No.1 tried to trespass in the portion in possession of the plaintiff. Plaintiff is being pressurized to vacate the property.

3. Learned senior counsel appearing on behalf of the petitioner-defendant No.1 has argued that the plaintiff has not filed any document to show any pre-

existing right in the suit property or even any document to show any money spent on the construction and contributions made by him and even failed to disclose the source from where the alleged funds were arranged for raising construction. Plaintiff has filed suit for declaration to the effect that he is co-owner to the extent of half portion of the suit property and in the paragraph of cause of action, it has been stated that cause of action accrued to the plaintiff in the year 2002-2004 when he had spent money on construction which was completed in 2004. So, the right to claim half share is reckoned from 01.01.2005. Period of limitation seeking declaration under Article 58 of the Limitation Act is three years from the accrual of cause of action, whereas suit was filed in the year 2021 and thus, suit is barred by limitation. The subsequent event regarding execution of gift deed/transfer deed or the knowledge of the same in June, 2020 does not extend the period of limitation. The case of the plaintiff is mainly based on the fact that he spent money on the construction of suit property, so he is the owner to the extent of half share in the suit property. No right, title or interest in any immovable property can be created, the value of which is more than Rs.100/- unless the document is duly registered. Even no such document has been placed on the file. The suit is also barred by the provision of Section 4 of the Benami Transaction (Prohibition) Act, 1988. The plaintiff is claiming that defendant No.2 was holding his half share as benami property as the money for construction of suit property was spent by the plaintiff. Since the plaintiff has not claimed the consequential relief of possession, suit is hit by the provision of Section 34 of the Specific Relief Act, 1963. The plaintiff has sought declaration and cancellation of the gift deed/transfer deed dated 22.07.2014 but no cause of action had accrued to the plaintiff to challenge the same since he had no pre-existing right in the suit property. Defendant No.2, who has executed transfer deed, has not alleged any fraud and has not filed any such suit. The prayer qua the challenge to transfer deed dated 22.07.2014 is liable to be rejected. The plaintiff has affixed court of Rs.200/- only. The valuation of the suit property is mentioned as Rs.20 lakhs and the plaintiff has sought declaration with regard to half share in the suit property, so he is liable to pay court fee of Rs.1,07,000/-. In support of his argument, learned counsel has relied upon ***T. Arvindum Versus TV Satyapal, 1977(4) SCC 467; Ragvendra Sharan Singh Versus Sri Ram Prasad Singh, AIR 2018 SCC 1470; and Ramisethi Venkalarna Versus Masyam Jamal, 2023 ARC 42.***

4. Learned counsel for the respondent has submitted that plaintiff contested the application and filed reply that cause of action accrued to the plaintiff when

defendant No.2 executed transfer deed in favour of defendant No.1 instead of plaintiff as he had spent his hard earned money for raising construction in the suit property. He has further submitted that Benami Transaction Act, Limitation Act, Registration Act and Specific Relief Act do not apply to the facts of present case. Plaintiff is only seeking declaration of the transfer deed being nonest, null and void and for cancellation of the same being executed by defendants in connivance with each other instead of plaintiff.

5. After hearing the arguments, learned trial Court, vide impugned order dated 20.10.2022, dismissed the application. Aggrieved against the said order, defendant No.1 has approached this Court by way of present revision petition.

6. I have heard the submissions of learned counsel for the parties and have gone through the file.

7. Order 7 Rule 11 CPC reads as under:-

11. Rejection of plaint.- The plaint shall be rejected in the following cases:— where it does not disclose a cause of action;

- (a) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (b) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (c) where the suit appears from the statement in the plaint to be barred by any law;
- (d) where it is not filed in duplicate;
- (e) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed

by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

7.1 In case ***Madanuri Sri Rama Chandra Murthy Versus Syed Jalal, (2017) 13 SCC 174***, the Hon'ble Apex Court has held as under:- “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.”

7.2 In case ***Saleem Bhai and others Versus State of Maharashtra and others, (2003) 1 SCC 557***, it has been held that for the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane. The pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

7.3 In case ***P.V. Guru Raj Reddy rep. by GPA Laxmi Narayan Reddy and another Versus P. Neeradha Reddy and others, (2015) 8 SCC 331***, the Hon'ble Apex Court has held as under:-

“5. Rejection of the plaint under Order 7 Rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.”

- 7.4 Admittedly, the plaintiff and defendants are real brothers. As per pleadings, plot No.C-2/73 was purchased in the name of their mother, who later on gifted the same to her younger son, defendant No.2. Plot No.C2/72 was also gifted to defendant No.2 by one M.L. Bajaj. The funds for construction of those plots were arranged by the plaintiff and his father and the plaintiff became co-owner of the property. Defendant No.2 started residing at ground floor, and the first floor and second floor were owned by the plaintiff who started residing at the first floor. Since their father desired that his sons should reside jointly in the said property during his lifetime and to fulfill said desire, defendant No.1 was given the right to reside at the second floor of the suit property.
- 7.5 In the transfer deed dated 22.07.2014, it is mentioned that transferor and transferee along with their elder brother and parents are living in the house built on amalgamated plot Nos.C-2/72 and C-2/73 i.e. the suit property. In other words, the family including the plaintiff is residing in the suit property.
- 7.6 In para 15 of the plaint, it has been pleaded that the suit property is undivided property and the defendants have no right, claim or interest in the share of the plaintiff in the suit property. The plaintiff is in possession of the suit property being co-owner. Possession of one co-owner is the possession of all co-owners. In para 17 of the plaint, it has been pleaded that plaintiff is in joint possession of the suit property and is co-owner. The valuation of suit property exceeds Rs.20 lakhs and as such, a fixed court fee was annexed, as per valuation, of Rs.200/- for declaration and cancellation. The relief of permanent injunction is also valued at Rs.150/- each, on which, prescribed court fee has been affixed.

7.7 Para 16 of the plaint reads as under:-

“That the cause of action for filing the present suit arose when the hard money of plaintiff was invested in the suit property but the defendant no.2 executed the transfer deed in favour of defendant no.1 instead of plaintiff as defendants have, colluded and their intentions have become malafide and the plaintiff came to know about the same on 01/06/2020. It further arose when the plaintiff approached the defendants to get the partition of the above said suit properties and the defendants delayed the same by one pretext or the other intending that the plaintiff does not have any share in the suit property. The cause of action arise in favor of plaintiff and against the Defendants on 31.05.2021 when an attempt to trespass was made. It further arose when legal notice was served upon the plaintiff and the same was replied and even thereafter the defendants told the plaintiff that they are going to dispose off/sell the joint moveable/immovable properties as well as suit property and the cause of action is still continuing in favour of the plaintiff and against the defendants as the defendants are bent upon to dispossess the plaintiff of suit property and creating third party interest in the suit property and other joint properties.”

7.8 The plaintiff is claiming cancellation of transfer deed on the ground that construction of suit property was carried out by the funds of the plaintiff and as per the assurance given by defendant No.2, the transfer deed was bound to be executed in favour of the plaintiff. It is the specific case of the plaintiff that he came to know about the transfer deed in the year 2020. The plaintiff has got cause of action to file the suit. Since the plaintiff is claiming himself to be in joint possession of suit property as co-owner and the entire family is residing in the suit property, so plaintiff is not required to affix ad valorem court fee. I draw support from case ***Suhrid Singh @ Sardool Singh Versus Randhir Singh and others, 2010(12) SCC 112***, the Hon'ble Supreme Court has held as under:-

“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to `A' and `B' -two brothers. `A' executes a sale deed in favour of `C'. Subsequently `A' wants to avoid the

sale. `A' has to sue for cancellation of the deed. On the other hand, if `B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by `A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If `A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If `B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if `B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an advalorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7."

7.9 Plaintiff-respondent No.1 has challenged the gift deed/transfer deed dated 22.07.2014 and it is the specific case of the plaintiff that the same was revealed only on 01.06.2020. A suit for cancellation of transfer deed can be filed within three years from the date of knowledge. Whether plaintiff came to know about the execution of transfer deed only on 01.06.2020 or not, is a fact to be proved by him. A suit for cancellation of a deed can be filed within three years from the date of knowledge. The learned trial Court has relied on case ***Salim D. Agboatwala Versus Shamalji Oddhavji Thakkar, Civil Appeal No.5641 of 2021 (Special Leave Petition (c) No.26441 of 2014), decided on 17.09.2021 (SC)*** wherein the Hon'ble Apex Court held that '*Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that limitation is a 'mixed question of fact and law'*'. In the instant case also, the limitation is a mixed question of law and fact and the suit cannot be said to be barred by limitation at this stage.

7.10 The suit is between the brothers and entire family is residing in the suit property. The dispute is regarding providing of funds for construction of the property. It is well known that for construction of property, entire family

contributes and property is shown owned by one or two members of the family. So, under such circumstances, suit at the threshold cannot be considered as barred under the Benami Transaction (Prohibition) Act. Moreover, case of the plaintiff is based on spending of amount and thereafter, assurance given by defendant No.2 to transfer the property in his favour. It is a case of oral promise made by defendant No.2 in favour of the plaintiff to transfer the property.

- 7.11 Plaintiff is claiming that he is in possession of part of the suit property and it is also so written in the transfer deed. When a person is in possession of the part of property, then he is not required to seek further relief of possession. The suit is not barred under Section 34 of the Specific Relief Act.
- 7.12 Each case is to be seen from the facts of the case. The case in hand is among brothers and as per pleadings, funds were provided by plaintiff for construction of property and there was assurance that property would be transferred in his favour, so the authorities cited by learned counsel for the petitioner are of no help to the petitioner.
8. In the light of above discussion, this Court is of the view that the plaintiff has got cause of action to file the suit. Suit is not barred under any law. Suit is neither undervalued nor insufficiently stamped. The claim of the plaintiff is required to be adjudicated in the course of trial and plaintiff cannot be non-suited at the threshold. A lawful order has been passed by the trial Court. The revision petition is without any merit and it is dismissed accordingly.
9. The abovesaid observations are only for the purpose of deciding present revision petition and the same shall have no effect on the merits of the case.

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