

(2024) 05 RAJ CK 0166

In the Rajasthan High Court

Case No : Civil Revision Petition No. 49 Of 2023

Acharya Ji Raghunath Ji Sampati Trust

APPELLANT

Vs

Shankarlal Joshi And Others

RESPONDENT

Date of Decision : 31-05-2024

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(d)

Limitation Act, 1963 — Section 54

Citation : (2024) 05 RAJ CK 0166

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Surendra Thanvi, M.S. Purohit

Final Decision : Allowed

Judgement

Birendra Kumar, J

1. The petitioner is aggrieved by the order dated 16.02.2023 passed in Civil Suit No.261/2022, whereby the learned trial Judge refused prayer of the petitioner to reject the plaint under Order 7 Rule 11 CPC.

2. The petitioner has relied on Clause (a) & (d) of Rule 11 of Order 7. Clause (a) applies where the plaint does not disclose a cause of action and Clause (d) applies where the suit appears from the statement in the plaint to be barred by any law.

3. Learned counsel for the petitioner contends that a fictitious and imaginary suit was filed without any real cause of action, which would be evident from a bare perusal of the plaint. The suit was barred by limitation but the learned trial Judge has not appreciated the law and has failed to exercise jurisdiction vested in it.

4. The plaintiff-respondent Shankarlal Joshi brought the suit for specific performance of contract against the petitioner and other respondents asserting therein that the petitioner Raghunath Sampati Trust had agreed to sell Plot Nos.9

& 10, which was acquired by the petitioner through a 'patta'. In token of agreement, part-consideration money was paid by the plaintiff and a receipt was issued by the petitioner on 12.5.1982. The suit was filed in the year 2022. The plaintiff asserted in the plaint that a Civil Suit bearing No.516 of 2003 (Kishanlal Vs. Brij Vallabh) for permanent injunction against the petitioner-Trust was pending wherein the plaintiff was also a party. The plaintiff requested the defendant-petitioner to execute sale-deed but the defendant did not execute, rather when the plaintiff was making new construction of a mud-wall which had already fallen, the petitioner obstructed in the month of April-May, 2021, hence, the plaintiff got cause of action for the suit.

5. The defendant-petitioner in his written statement specifically denied that there was any agreement to sale with the petitioner. The plaintiff was never allowed possession of the suit property, rather in the month of April-May, 2021 the plaintiff attempted to forcefully take possession of the Trust property, hence, an FIR was lodged against the plaintiff. A malafide and frivolous suit has been filed just to harass the petitioner-defendant.

6. The plaintiff relied on receipt dated 12.5.1982, English translation whereof is being reproduced below :-

"Received Rs.1000/- (Rupees One Thousand Only) from Shri Shankar Lal Ji Joshi in respect of the Trust property near the well.

Sd/-

Narsingh Das Acharya

Receiver "

7. Evidently the aforesaid receipt does not mention reference of area of any plot and the purpose for which receipt was granted whether it was a lease for one year to cultivate or otherwise a licence for temporary use. However, one thing is clear that the aforesaid one sentence recital does not constitute a valid agreement to sell, as it lacks description of the property, consideration money etc.

8. A perusal of the plaint makes it abundantly clear that it contains imaginary statement without any base. Another suit bearing No.516 of 2003 referred above was filed by Kishan Lal against the Trust claiming permanent injunction against the Trust property. It is not acceptable that the plaintiff would await for result of the aforesaid suit wherein quite different property was involved, therefore, the suit is barred by limitation as provided under Section 54 of the Indian Limitation Act. The limitation under the Act is of three years and starts running from the date fixed for the purpose, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

9. As discussed above, there is no agreement to sell between the parties, hence there is no question of valid cause of action within time.

10. Learned counsel for the plaintiff-respondent has relied on the affidavit sworn by a Trustee wherein he has stated that possession of the said plot has been given to the plaintiff. The aforesaid subsequent affidavit would not make any difference.

11. Learned counsel for the petitioner has relied on the judgment of Hon'ble Apex Court in Raghuwendra Saharan Singh Vs. Ram Prasanna Singh reported in (2020) 16 SCC 601 for his submission that if the suit is barred by limitation it comes under Clause (d) as suit barred under any law.

12. This Court finds substance in the submission aforesaid. The suit was barred by limitation, hence, the plaint was fit to be rejected on this ground alone. Moreover, on realistic and meaningful reading of the entire plaint, it is evident that there is no real cause of action in favour of the plaintiff as there was no agreement between the parties to sell any property, hence, the suit for specific performance of contract was not maintainable, therefore, the plaint is fit to be rejected under Clause (a) as well. Since the trial Judge has erroneously exercised jurisdiction vested in it, the impugned order stands hereby set aside and this revision petition is allowed.