
(2025) 12 SHI CK 1792
In the High Court Of Himachal Pradesh
Case No : CMPMO No.353 Of 2025

Shrikant Shekri

APPELLANT

Vs

Kumari Seema & Others

RESPONDENT

Date of Decision : 02-12-2025

Acts Referred:

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

Citation : (2025) 12 SHI CK 1792

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : V.S. Chauhan, Arsh Chauhan, Maan Singh, Pushpinder Jaswal

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this petition, the petitioner has assailed order dated 13.06.2025 (Annexure P-6), passed by the learned Trial Court, in terms whereof, the application filed by the petitioner under Order 7, Rule 11 (a) (d) of the Civil Procedure Code has been dismissed.

2. Brief facts necessary for the adjudication of this petition are that the respondents herein have filed a suit for declaration against the present petitioner, in terms whereof, a decree has been prayed to the effect that defendant No.2 is the biological father of the plaintiff and that she is the daughter of defendant No.2 and defendant No.3. Certain other reliefs have also been prayed in the plaint.

3. In terms of the averments made in the plaint, the case of the plaintiff is that she was born from the lions of defendant No.2, who according to the plaintiff outraged the modesty of defendant No.3. I.e. the mother of the plaintiff and this happened when defendant No.2 was employed as a teacher in Government School Khaneri and defendant No.3 was studying in the said school. The cause of action as has been pleaded in Para-10 of the plaint reads as under:-

"10. That the cause of action, accrued to the plaintiff and against the defendants firstly in May 1993 and June 1993 when the defendant no.3 was subjected to sexual intercourse by the defendant no.2. and then on 11.2.1994 when the plaintiff was borne. The same also accrued when the accused was tried and convicted on 31.7.1996 and finally convicted by hon, ble Supreme Court in second appeal. The cause of action accrued when the defendant admitted that he shall enter name of plaintiff in Panchayat in 1996 and then refused after judgment of acquittal and then after conviction by Hon,ble Supreme court. The cause of action finally accrued again when the defendants were served with notice and they actually refused to admit the claim of the plaintiff. Prior to this the cause of action arose when the plaintiff visited Tehsil office Kumarsain and GP Shiwan and her name could not be entered. The cause of action continues."

4. In these proceedings at the stage when the matter was listed for recording the evidence of witnesses of the plaintiff and an application was also preferred for DNA test by the plaintiff an application under Order 7, Rule 11 of the Civil Procedure Code was filed for rejection of the plaint, inter alia, n the ground that the same was barred by limitation and no cause f action was pleaded in the plaint.

5. Vide order dated 13.06.2025, the application has been dismissed by the learned Trial Court by returning the following findings:-

"I have heard the Ld. Counsel for the parties and gone through the record.

From the pleadings of the plaintiff this court is satisfied that the of cause of action has been clearly and specifically pleaded in para No. 10 of the plaint from which also it can not be said that the present suit is barred by limitation. The plaintiff has clearly pleaded that when she visited the concerned Panchayat in the year 2015 and 2018 pertaining to entry of her name in the record, she was asked to complete her studies and thereafter the detailed entry can be done only by a judicial court order. It has been further pleaded that she had issued notice to the defendant to which also a reply has been given. Such notice is on the file which has been posted on dated 16.11.2019. The date of filing of present suit is 18.03.2020.

In view the above discussed pleadings as well as the documents, this court is of the view that at this stage, it can not be said that the plaint does not disclosed valid cause of action for filing present suit or that the present suit is not within limitation.

The plaintiff can n t be precluded from getting the declaration that she is the daughter of the defendant No. 2 merely on the ground hat such party has failed to file the suit within 3 yea s from the date of obtaining her majority. On s ch point, this court is placing reliance on the law laid down by the Hon'ble Allahabad Court in case titled Bhoop Singh Vs Tarif Singh reported in 1950 STPL 2613 Allahabad.

Keeping in view the above discussion especially the pleadings of the plaintiff, this court is of the view that the present plaint can not be rejected. The plaint clearly discloses the existence of valid cause of action qua which specific allegations have been put forth by the plaintiff in para No. 3, 4 and 10 of the plaint.

On such point, this court is also placing reliance on the law laid down by our Hon'ble High Court in case titled Ashirwad Developers and Promoters Vs Ram Lok and Another re-reported, 2024 STPL 9978 HP.

It is pertinent to mentioned here that the present applica-tion has been filed at a belated stage when this case was fixed for cross-examination of Pws and it has been filed particularly when an application for DNA test has also been preferred by the plaintiff. Thus, there seems to be some truth in the allegations of the plaintiff that present CMP has been filed with malafide intention after the filing of aforesaid application for DNA test.

Keeping in view the aforesaid, this court is satisfied that there is no merit in the present CMP, accordingly the same is here by dismissed. After due completion and registration be tagged with main file.

Now be lis ed for cross-examination of Pws on 10.07.2025.”

6. Learned Senior Co nsel for the petitioner argued that the order passed by the learned Trial Court is not sustainable in the eyes of law, for the reason that the learned Trial Court erred in not appreciating that there was no cause of action which could be made out from t e contents of the plaint and further the suit was ex facie hit by limitation. He thus, submitted that as these extremely mportant aspects of the matter were not appreciated by the learned Trial Court, the impugned order is perverse and deserved to be set aside.

7. On the other hand, learned Counsel for the respondents submitted that there is no perversity in the impugned order, for the reason that the application of the petitioner was rightly rejected by the learned Trial Court, as filing of the application was nothing, but an afterthought just to delay the proceedings. Learned Counsel submitted that it was evident from the order passed by the learned Trial Court that the application was filed at a belated stage. He further submitted that otherwise also a perusal of the plaint demonstrates that cause of action stands pleaded therein and as far as the issue of limitation is concerned the suit was well within limitation because in terms of he relief prayed for by the plaintiff in the Civil Suit, the cause of ac ion was a recurring cause of action and thus, it could not be said that the same was barred by law of limitation.

8. I have heard learned Counsel for the parties and have also carefully gone through the impugned order as well as the documents appended with the petition.

9. At the very outset, this Court would like to make an observation that it is settled law that an application under Order 7, Rule 11 of the Civil Procedure Code has to be decided on the basis of the averments made in the plaint and

documents, if any, filed by the plaintiff. The defence of the defendants is not to be taken into consideration by the Court at this stage.

10. In this backdrop, when one peruses the contents of the plaint, one finds that the declaration is being sought by the plaintiff against defendant No.2 that he is the biological father of the plaintiff and that she is the daughter of defendant No.2 and defendant No.3. Pleadings in the plaint alongwith Para-10 of the plaint which already stand quoted by me hereinabove spell out the cause of action as is mentioned in the plaint.

11. Besides other averments prayed in the para it is also mentioned therein that cause of action finally accrued when the defendants were served with Notice and they actually refused to admit the claim of the plaintiff.

12. A perusal of the impugned order demonstrates that this Notice is dated 16.11.2019 and the Civil Suit was filed on 18.03.2020.

13. In light of these facts, this Court is of the view that at least for the purposes of adjudication of the application under Order 7, Rule 11 of the Civil Procedure Code, learned Trial Court correctly held that the Suit was not hit by limitation.

14. Otherwise also, in a case like the present one obviously the learned Trial Court shall have to answer the question whether the cause of action is a continuing one as was urged by the learned Counsel for the respondent and, therefore also, whether the Suit can be said to be hit by the law of limitation are issues which have to be decided in the course of trial.

15. Therefore, in the light of the above observation, as this Court does not find any reason to interfere with the impugned order, present petition is dismissed. However, it is clarified that the observations which have been returned by the learned Trial Court while dismissing the application and the observations which have been made by this Court while dismissing the present petition are only for the limited purpose of adjudicating these proceedings and the same will have no bearing as far as the trial of the Suit is concerned and the learned Trial Court shall not be influenced by the same. Pending miscellaneous application(s), if any also stand disposed of accordingly.