
(2011) 04 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : CR No. 2059 of 2011

Sukhbir and Another	Vs	APPELLANT
Jogender and Another		RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 227

Citation : (2011) 04 P&H CK 0053

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jaswant Singh, J.—Defendants/Petitioners have filed the instant revision petition under Article 227 of the Constitution assailing the order

dated 18.1.2011 whereby their application under Order 7 Rule 11 CPC for rejection of plaint has been dismissed.

2. The dispute is between the descendants of common ancestors of one Dhoriya, who had three sons namely Ramji Lal, Hoti Lal and Roop Lal.

Defendants/Petitioners are the son and daughter of Roop Lal whereas the Respondents/Plaintiffs are grandsons of the other brother Ramji Lal. The

dispute is with regard to the property of Hoti Lal who died issueless and allegedly during his lifetime had suffered a collusive decree dated

12.09.1995 bequeathing his share in the property to his brother Roop Lal, i.e. father of the Petitioners/Defendants. Respondents/Plaintiffs filed a

suit for declaration challenging the collusive decree on the ground of fraud and further submitting that the property was ancestral in the hands of

Hoti Lal who could not exclude the other members of the family. The Defendants/

Petitioners moved an application under Order 7 Rule 11 CPC

inter alia alleging that the suit was barred by limitation , suffers from the vice of concealment since the father of the Plaintiffs namely Sukhi Ram @

Sukhi had in the year 1989 also filed a suit challenging the aforesaid decree which was dismissed in default.

3. Learned Counsel for the Petitioners submits that the concealment in the plaint with regard to the earlier suit filed by the father of the Plaintiffs is

writ large besides the fact that the suit is hopelessly time barred as it is not believable that Plaintiffs were not aware with regard to the execution of

the decree in the year 1985.

4. After hearing the learned Counsel for the Petitioners and perusing the pleadings carefully, I am not inclined to agree with the counsel for the

Petitioners since in my opinion the learned trial court has rightly observed that the suit being barred by limitation is a mixed question of facts and

law which has to be decided at the stage of trial. It is further observed that the earlier suit was filed by the father of the Plaintiffs and the Plaintiffs

being not party to the suit it cannot be said at this stage that the suit suffers from the vice of concealment which of course shall also be decided at

the stage of trial.

5. In view of the above, finding no merit in this revision petition the same is hereby dismissed.