

Chanan Devi Vs. Sudarshan etc.

Present:- Sh. Ankit, proxy counsel for Sh. D.C.Garg, counsel for plaintiff.
Sh. Ajay Kaushik, counsel for defendants no.1 & 2.
Sh. Amit Singla, counsel for defendants no.3 & 4.
Ms. Ritu Singh, GP for defendant no.5.

Order:-

This order of the court shall dispose of an application for dismissal of suit qua defendants no.3 and 4 being not maintainable, filed by the defendants no.3 & 4.

2. Arguments heard.

3. Ld. counsel for defendants no.3 & 4 argued that the defendants no.3 & 4 had already deposited the compensation amount, now, plaintiff has to approach the competent authority i.e. Revenue Officer, Panchkula for the apportionment of compensation amount but plaintiff rather approaching defendant no.5 for the apportionment of her share has filed the present suit, so, the present suit is abuse of process of law. Further argued that the present suit reveals that neither any cause of action has been accrued in favour of the plaintiff against the defendants no.3 & 4 nor the same has been mentioned against the defendants no.3 & 4, so, the present suit is not maintainable qua defendants no.3 & 4. Further argued that in the present case the acquisition has been made during 2011 to 2015 and defendants no.3 & 4 paid the compensation amount but plaintiff did not filed any representation before the competent authority with regard to the alleged claim of the amount of compensation as per her nor she has mentioned any fact pertaining to the said fact nor she contested for the compensation of the land acquired in village Billa, District Panchkula and during the period 2015 to 2019 plaintiff remained silent for such a long, hence, the present suit is barred by law of limitation. With these submissions, he prayed that present suit qua defendants no.3 & 4 may kindly be rejected.

4. Per contra, learned counsel for the plaintiff vehemently

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opposed the same and denied all the averments taken by the defendant. Further argued that in the present suit the plaintiff has claimed the relief of permanent injunction restraining the defendants no.3 to 5 from making any further payment to the defendants no.1 & 2 in respect of acquired land out of suit land and the said relief cannot be granted by the defendant no.5. Further argued that present suit is a well founded case having an arguable cause of action and law of limitation is a mixed question of law and fact. Therefore, he prayed for dismissal of the present application.

5. I have heard the arguments raised by the parties to prove their contentions and have gone through the case file and documents relied upon by the parties carefully.

6. By way of filing present application, the defendants no. 3 & 4 has sought for dismissal of suit being non-maintainable for want of cause of action qua defendants no.3 & 4 and being barred by law of limitation.

7. At the very outset it is pertinent to mention that at the stage of deciding application for dismissal of the suit, the defence raised by the defendants cannot be looked into. In the present case, the main contention of the learned counsel for defendant/applicant is that the plaintiff has no cause of action to file the present suit as the defendants no.3 & 4 already paid the compensation amount. So far as the above said contentions of the learned counsel for defendants no.3 & 4 is concerned, the same are not tenable at this stage as the above mentioned contentions as raised by the learned counsel for applicants constitutes the defense of the defendants to the suit as instituted. The contentions raised by and on behalf of the defendants seem to suggest that there is no cause of action for instituting the suit and same is quite different and distinct from alleging and establishing that there is a failure to disclose cause of action in the plaint qua defendants no.3 & 4.

In **Santi Ranjan Das Gupta Vs. Dasuram Mirzamal Firm – AIR 1957 ASSAM 49** the Division Bench of the Hon'ble Assam High Court has drawn distinction between 'no cause of action for the suit' and 'failure to disclose cause of action'. The Division Bench has observed that the plaint may disclose cause of action which may not be sufficient to sustain the suit.

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The suit in such case would be liable to be dismissed. However, the plaint in such a case cannot be rejected by resort to Order VII Rule 11 (a) of the CPC.

In **British Airways Vs. Art Works Export Ltd. and another AIR 1986 CALCUTTA 120** the Division Bench of the Hon'ble Calcutta High Court declined to reject the plaint based on the plea that there was no cause of action for the plaintiff to institute the suit. In this case also the Division Bench made a distinction between the 'absence of cause of action' and the 'failure to disclose cause of action'. In the former case the suit may be dismissed upon conclusion of the trial. However, it is only in the later case that a plaint can be rejected.

In **Industrial Development Bank of India Vs. Mrs. G.C.Kamala and others- 2009 AIHC 1611** the learned Single Judge of the Madras High Court has held that as long as the plaint discloses a cause of action, the same cannot be rejected by resort to Order VII Rule 11(a) of the CPC.

8. On a careful perusal of the case file, the present suit has been filed by the plaintiffs, for seeking a decree for declaration alongwith consequential relief of permanent injunction. In the present case, the case of the applicant/defendants no.3 & 4 is that the plaintiff has no cause of action to file the present suit. However, in order to gather the cause of action, the plaint is to be read as a whole, therefore, in the present case, on a collective reading of the contents of the plaint it can be safely deduced that prima faice the plaint discloses a cause of action qua defendants no.3 & 4.

9. As regards, the issue of present suit being barred by law of limitation raised by the defendants no.3 & 4, this court is of considered view that in the present case that issue regarding barred by law of limitation is a mixed question of fact and law which cannot be decided without allowing the parties to produce their respective evidence.

10. Therefore, in view of factual and legal backdrop discussed above, this court is of the considered opinion that the present application of the

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defendants has no merit and is liable to be dismissed and **same is hereby disposed of as dismissed**. However, it is made clear that the findings of this order shall have no effect on the merits of the case.

Pronounced in open Court.
13.01.2023

(Anjali Narwal)
Civil Judge(Junior Division)
Panchkula,UID No.HR0547

All the 4 pages of this order have been checked & signed by me.

(Anjali Narwal)
Civil Judge(Junior Division)
Panchkula,UID No.HR0547

Anita

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Present:- Sh. Ankit, proxy counsel for Sh. D.C.Garg, counsel for plaintiff.
Sh. Ajay Kaushik, counsel for defendants no.1 & 2.
Sh. Amit Singla, counsel for defendants no.3 & 4.
Ms. Ritu Singh, GP for defendant no.5.

Today, the case was fixed for arguments on an application for dismissal of the suit qua defendants no.3 & 4, filed by the defendants No.3 & 4.

Arguments heard on the afore-mentioned application. Vide my separate order of even date, the afore-mentioned application is hereby dismissed as detailed therein.

Now, case is adjourned to **29.03.2023** for filing written statement and reply to stay application by defendants no.3 & 4.

Date of order :13.01.2023
anita

(Anjali Narwal)
CJ(JD)/RC, Panchkula.
UID No. HR0547