

(2014) 07 P&H CK 0760

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 6288 of 2011

Estate Officer

APPELLANT

Vs

Satwant Kaur

RESPONDENT

Date of Decision: July 14, 2014

Acts Referred:

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

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: Naresh Parbhakar, Advocate for the Appellant; Ranjit Saini, Advocate and Jasleen Sidhu, AAG, Advocate for the Respondent

Judgement

Rajiv Narain Raina, J.

This petition is directed against an order rejecting petitioner's application under Order 7 Rule 11 for rejection of the plaint as the suit was barred by law. Mr. Parbhakar draws attention to the facts pleaded in para. 11 of the plaint with respect to the cause of action. They read as follows:-

That the cause of action accrued to the plaintiffs firstly on the day when they applied for the plot in February, 2002, and secondly on the day on which the draw was held without including the names of the plaintiffs i.e. 15.05.2002, and again on every occasion when the requests of the plaintiffs was turned down by the defendants, and lastly a day before yesterday when the defendants finally refused to admit the claim of the plaintiffs and still continue.

2. The suit was filed on 15.06.2005. "A day before yesterday" would take the cause of action to 13.06.2005. In what manner and mode did GMADA refuse to admit the claim of the plaintiff on 13.06.2005 is not explained by pleading material particulars and facts is not known. GMADA being a public authority could only deny a claim in writing which might give rise to a cause of action.

3. The plaintiffs had applied for residential plots in February 2002, on which the draw of lots was held on 15.05.2002. The plaintiffs remained unsuccessful in the draw of lots. In the suit, a claim was made for a declaration and grant of an injunction seeking directions to GMADA to allot plots of smaller sizes than the 500 sq. yards plots of land originally applied for under the public advertisement issued inviting applications from the general public for allotment of plots. The suit has been filed for declaration prayed for, for which the limitation prescribed under Article 58 of the Limitation Act, 1963 is three years from the date of accrual of the cause of action. The period of limitation to bring suit expired on or about 15.05.2005. It is well settled that if limitation for bringing a suit runs out the rights to sue is barred though such right may subsist but the judicial remedy is taken away.

4. GMADA is a public authority and can speak formally through express orders refusing or allowing claims. Lawyers advising litigants often rather casually introduce an imaginary date in the formal paragraph regarding cause of action and usually plead that "yesterday" their rights were put under clouds and denied by the defendant and therefore the suit. Such casual and wanton pleas have become the order of the day in complaints and it is time for Courts to be tough before acting mechanically on such pleadings. This is especially so when the bar of limitation stares one in the face.

5. The trial Court was not correct in dismissing the application under Order 7 Rule 11 CPC and proceeding with the trial. The suit was clearly barred by law of limitation on the showing of the plaintiff itself. The argument of the learned counsel that limitation is a mixed question of fact and law and therefore requires evidence and trial is wholly misconceived because the suit was instituted three years after the draw of lots in which the respondents herein were not successful. If the respondents have approached the Consumer Forum on the same subject matter and for similar relief, as I am told then those proceedings can be taken to their logical conclusion.

6. No ground is made out to interfere with the impugned order in jurisdiction under Article 227 of the Constitution.

7. Dismissed.