

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No. 3814 of 2016

Date of decision :02.08.2016

Rajender and others

.....Petitioners

Versus

Surendri

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Adish Gupta, Advocate
for the petitioners.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 12.05.2016 passed by the learned Civil Judge (Jr. Division), Faridabad, vide which the application moved by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC) has been dismissed.

2. Learned counsel for the petitioner contended that the suit filed by the plaintiff-respondent was not maintainable. He contended that the land in question was initially in the name of Jai Chand, the father of the plaintiff who was recorded as a *Gair Marusi* in the revenue record. Deceased-Jai

Chand left behind his widow wife-Smt.Birwati, who further alienated the suit property in favour of Sube Ram vide general power of attorney. He further alienated the property in favour of the applicants vide sale deed dated 10.04.1999. He further contended that plaintiff-respondent has no concern with the suit land nor has any right to file the suit as per the provisions of Section 5 and 59 of the Punjab Tenancy Act, 1887. Thus, he contended that the suit of the plaintiff is barred by law and plaint is liable to be rejected under Order 7 Rule 11 CPC.

3. I have duly considered the aforesaid contentions.

4. It is settled principle of law that at the time of deciding the application under Order 7 Rule 11 CPC, only the averments in the plaint has to be taken into consideration in order to find out whether the suit is barred under any law. The stand of the defendants in the written statement or even in the application for rejection of the plaint is wholly immaterial. It is only if from the averments in the plaint that the suit appears to be barred by any law the plaint can be rejected. Reliance can be placed on cases **P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and another Vs. P.Neeradha Reddy and others etc. 2015(2) R.C.R (Civil) 43** and **Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. M/s Ponniyamman Educational Trust represented by its Chairperson/Managing Trustee 2012(3) R.C.R. (Civil) 811.**

5. The entitlement of the plaintiff-respondent to succeed any right in the suit property and the capacity of her father are the mixed questions of law and facts which could only be adjudicated upon on appreciation of the evidence and is not permissible to be determined/decided at this stage.

6. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the well reasoned impugned order passed by the learned trial Court, which does not call for any interference by this Court.

7. Thus, the present revision petition having no merits, is hereby dismissed.

02.08.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No