

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

CR No.6897 of 2016(O&M)

Decided on. 18.10.2016.

Smt. Rameshwati

.....Petitioner

Versus

Jeet Ram and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 24.08.2016 passed by the learned Civil Judge (Jr. Division), Faridabad, vide which the application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short C.P.C) for rejection of the counter claim filed by the respondents no.1 to 6 has been dismissed.

2. Learned counsel for the petitioner contended that the petitioner has filed the suit for permanent injunction with consequential relief of mandatory injunction against the respondents restraining them to interfere in the peaceful possession of the plaintiff and also restraining the proforma respondents from alienating the suit land. Respondents filed the written statement. Respondents no.1 to 6 also filed the counter claim. Thereafter, the petitioners withdraw their suit

and now only the counter claim filed by respondents no.1 to 6 is pending. He contended that in the said counter claim respondents no. 1 to 6 have challenged the sale deeds alleging them to be the owners of the suit property. He contended that in fact the controversy regarding the title of the suit property is already the subject matter of the Regular Second Appeal no. 534 of 2015, titled as 'Jeet Ram and others Vs. Gulab Singh and others'. He further contended that respondents no.1 to 6 are claiming themselves to be the owner of the suit property. But, their plea regarding ownership has already been rejected by the learned trial Court as well as by learned First Appellate Court in the previous suit and now the Regular Second Appeal is pending before this Court. Thus, he contended that unless and until the question of title is decided in favour of respondents no.1 to 6, they have no locus standi and cause of action to file the suit. Thus, he contended that the pendency of the suit is mere the wastage of time and the learned trial Court has wrongly dismissed the application.

3. I have duly considered the aforesaid contentions.

4. The legal position is well settled that in order to decide the application under Order 7 Rule 11 CPC, the Court will only look into the contents of the plaint. At that stage, the pleas raised by defendants in the written statement are wholly irrelevant and matter is to be decided only on the basis of averments in the plaint. Reference can be made to cases **Bant Singh v. Noble Trade Cone Pvt. Ltd. 2014 (1) P.L.R 713** and **The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. M/s Ponniamman Educational Trust represented by its**

Chairperson/Managing Trustee 2012 (3) R.C.R (Civil) 811 (S.C).

5. Annexure P-4 is the copy of the counter claim filed by the respondents no.1 to 6. In the counter claim, they are alleging to be the owners in actual and physical possession of the land in dispute. They have challenged the sale deed dated 28.08.2012 and 08.10.2012 executed by respondent no.2 being General Power of Attorney of defendants no.11 to 18 in favour of plaintiffs. Respondents have also referred to the previous suit i.e. Civil Suit No. 177 of 20.04.2005/07.02.2011 titled as 'Davinder Singh Vs. Jeet Ram and others', decided on 17.02.2012. It was pleaded that they have challenged the said judgment and decree by way of appeal and the impugned sale deeds have been obtained after the operation of the judgment and decree dated 17.02.2012 was stayed by the Appellate Court.

6. It has been further pleaded in the counter claim that the impugned sale deeds have been executed on the basis of the judgment and decree dated 17.02.2012 inspite of the stay order passed by the Appellate court. Thus, the said sale deeds are illegal, null and void. Thus, keeping in view the averments raised in the counter claim, it cannot be stated that respondents no.1 to 6 have no cause of action to file the counter claim on the date of institution of the said counter claim. This fact is not disputed that the Regular Second Appeal against the dismissal of their appeal by the learned First Appellate Court is pending before this Court. The legality and validity of the impugned sale deeds is a question to be decided by the learned trial Court on the basis of the evidence to be adduced before it. The pleas raised by

petitioner in the application does not attract any of the ground mentioned in order Order 7 Rule 11 CPC for rejection of the counter claim.

7. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

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

October 18, 2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No