

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Civil Revision No.7033 of 2016 (O&M)

Date of decision : 15.11.2016

Hari Om

.....Petitioner

Versus

Bhagwant Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ankur Ghai, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 13.07.2016 passed by the learned Civil Judge (Junior Division), Ludhiana, vide which the application moved by the petitioner-defendant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for brevity the “CPC”) for rejection of the plaint has been dismissed.

2. Learned counsel for the petitioner contended that the suit filed by the respondent-plaintiff was barred by limitation as well as by principle of *resjudicata*. He contended that the learned trial Court has wrongly dismissed the application for rejection of the suit as the suit filed by the respondent-plaintiff being barred by limitation and principle of *resjudicata* was barred by law.

3. I have duly considered the aforesaid contentions.

4. It is settled principle of law that in order to decide the application under Order 7 Rule 11 CPC only the contents of the plaint are to be seen. At that stage no cognizance can be taken of the averments raised by the defendant in the written statement or the application filed under Order 7 Rule 11 CPC for rejection of the plaint. In the instant case the rejection of the plaint has been sought by the petitioner on the ground that the suit was barred by limitation and the principle of *resjudicata*. There is no dispute with the proposition of law that the plea of limitation and applicability of principle of *resjudicata* are the mixed question of law and facts and can only be adjudicated upon on appreciation of evidence. Moreover, the learned trial Court in the impugned order has mentioned that in the previous suit the sale deed dated 23.03.2007 was not challenged and the dispute with respect to the said sale deed was not directly and substantially in issue in the previous suit.

5. Thus, I do not find any merits in the present revision petition and the same is hereby dismissed.

15.11.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No