

**Civil Revision No.2633 of 2017**

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

Sr. No.121

**Civil Revision No.2633 of 2017  
DECIDED ON: April 18, 2017**

**BAHADUR (DECEASED) THROUGH HIS LRS. AND OTHERS**

**..PETITIONERS**

**VERSUS**

**SURJA RAM (DECEASED) THROUGH HIS LRS. AND OTHERS**

**...RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE JASPAL SINGH**

Present: Mr. Sandeep Goyatt, Advocate,  
for the petitioners.

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**JASPAL SINGH, J.**

Aggrieved against the order dated February 21, 2017 passed by learned Civil Judge (Jr. Divn.) Hisar, whereby an application under Order VII Rule 11 CPC filed in Civil Suit No.286-C dated October 15, 2016 titled as "Surja Ram (since deceased) etc. vs. Bahadur (since deceased) & ors. has been dismissed.

2. While assailing the impugned order dated February 21, 2017, it has been argued with vehemence by learned counsel for the petitioners/defendants that through the present suit, respondents/plaintiffs

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have challenged the revenue entries coming from the year 1966 to till date and the suit has been filed after a long delay of more than five decades, as such, the suit is hopelessly beyond limitation. Moreover, the suit land already stood partitioned vide order dated October 16, 2015. The respondents/plaintiffs are very well within their knowledge of the partition of the suit property and further that they are neither owners nor in possession of the suit land. Otherwise also, mere suit for declaration without claiming possession is not maintainable. Even, the proper court fee as required has not been affixed on the plaint. Thus, the plaint is liable to be rejected on the grounds unfolded above. But the learned trial court has wrongly and illegally dismissed the application for the simple reason that it is a matter of evidence and controversy can only be decided after both the parties adduce their respective evidence. Further that at the initial stage, it cannot be said that the suit is time barred or that the suit land has already been partitioned vide order dated October 16, 2015. But when the matter is clear on the face of it that suit has been filed after five decades challenging the entries appearing in the jamabandies, the plaint deserves to be rejected at its initial stage. Allowing the continuation of the proceedings would be nothing but an abuse of process of law and sheer wastage of time, money and energy of the parties. The learned counsel for the petitioners accordingly prayed for setting aside of the impugned order by way of acceptance of instant petition.

3. This court has given due consideration to the aforesaid submissions made by learned counsel for the petitioners but does not find any legal and factual substance therein.

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4. The respondents/plaintiffs have filed a suit for declaration and permanent injunction as far as the payment of the court fee and jurisdiction is concerned it is a mixed question of law and fact and can only be decided after the parties are allowed to lead their evidence in support of respective pleadings. Moreover, if the court comes to the conclusion at the time of final disposal of the suit that the suit is not properly valued for the purposes of the court fee and jurisdiction, the plaintiffs can be directed to make the deficiency of court fee good and on account of jurisdiction, the suit can be dismissed. As far as the contention of learned counsel for the petitioners that suit is beyond limitation or is barred by limitation is concerned, it is well settled proposition of law at the time of disposal of the application under Order VII Rule 11 CPC only the averments made in the plaint are to be taken into consideration, therefore, on the basis of the defence taken by the defendants, the plaint cannot be rejected. Thus, this court is of the considered view that the dismissal of an application under Order VII Rule 11 CPC moved by the petitioners/defendants is legal, valid and in consonance with the settled proposition of law. As such, the impugned order does not call for any interference by this court and the instant petition being devoid of merit is dismissed.

5. No order as to costs.

April 18, 2017  
*Ankur*

(JASPAL SINGH)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |