

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

CR No. 4816 of 2014

Date of Decision: 25.10.2017

RAJ KUMAR

-PETITIONER

VS

KAMLESH

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Chanderhas Yadav, Advocate,
for the petitioner.

Mr. Aditya Yadav, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed the order dated 03.05.2014 passed by Civil Judge (Junior Division), Bahadurgarh vide which application under Order 7 Rule 11 CPC filed by the defendant-petitioner was rejected.

Plaintiff filed a suit for permanent injunction against her brother seeking to restraint the defendant permanently from selling the whole plot and to sell the area more than his share and specific area of the plot as mentioned in the plaint.

An application under Order 7 Rule 11 CPC was filed by the defendant on the ground that the suit has been preferred in the nature of permanent injunction without seeking partition of

the suit property and the cause of action is barred in terms of Section 41(h) of the Specific Relief Act, 1963.

Having heard the learned counsel for the parties, I am of the view that injunction can be refused if there is an alternate or efficacious remedy available to the petitioner. The plaintiff could have filed a suit for partition along with prayer for interim relief therein.

Admittedly, the parties are co-sharers in the joint property. Though the defendant has set up a Will in his favour, the plaintiff would be at liberty to assail the Will in accordance with law after impleading all the necessary parties in a separate suit.

In view of Section 41(h) of the Specific Relief Act, suit for permanent injunction is not maintainable, however, liberty is granted to the plaintiff to avail any other remedy in accordance with law including the remedy to challenge the Will in favour of the defendant in accordance with law.

Disposed of.

25.10.2017
 jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No