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

**Civil Revision No.6621 of 2017
Date of Decision: 26.09.2017**

Surjeet Singh

.....Petitioner

Vs

Nachhattar Singh and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. A.P.S. Deol, Sr. Advocate with
Mr. Karan Jindal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 11.08.2017 passed by the Civil Judge (Jr. Divn.) Talwandi Sabo whereby the application under Order 7 Rule 11 CPC filed by him was dismissed.

[2]. Brief facts are that the plaintiffs filed a suit for declaration that they are owners of the land in question and the mutations of redemptions and sales are illegal and void. Consequent relief of possession has also been sought in the suit. Earlier an application was filed by defendant No.5 on the ground of insufficiency of court fee affixed on the memorandum

of the suit. Non-executant not in possession sought possession of the suit land besides seeking declaration in respect of agricultural land. The trial Court found that the case of the plaintiffs was covered under the 3rd principle as laid down in **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010(2) R.C.R. (Civil) 564.** The said application was dismissed vide order dated 26.10.2015. The second application was preferred by defendant No.7/petitioner on the ground of want of cause of action and non-maintainability of the suit.

[3]. Learned Senior counsel for the petitioner submitted that in view of ratio of **The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponnamman Educational Trust represented by its Chairperson/Managing Trustee, 2012(3) CivCC 651**, drafting of vexatious and meritless pleadings by way of clever mechanism would not stop the Court from considering the applicability of Order 7 Rule 11 CPC. The suit is barred in terms of Section 34 of the Specific Relief Act (for short 'the Act'). The mutations have been challenged without making any challenge to the mortgages and the sale deeds, therefore, the plaint would not give any cause of action in favour of the plaintiffs.

[4]. I have considered the submissions made by learned

Senior counsel for the petitioner.

[5]. It is settled principle of law that at the stage of consideration of application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen. The plaint would show that the challenge has been made to the mutations, redemption, transfers and consequent relief of possession has also been sought by the plaintiff. Apparently, simpliciter suit for declaration is not maintainable in view of Section 34 of the Specific Relief Act, but in the instant case declaration along with consequential relief of possession has been sought by the plaintiffs, therefore, the bar on the suit in terms of Section 34 of the Act may not be attracted and such considerations cannot be made at this stage while deciding the application under Order 7 Rule 11 CPC for which considerations are entirely different than the considerations to be made at the time of regular trial of the suit.

[6]. The challenge to the mutations, mortgages and transfer deeds would have made the plaintiffs liable for affixation of court fees in view of seeking possession of the suit property as well. The considerations of first application resulted in dismissal of the same when the case was found to be a case of non-executant not in possession, who is seeking possession of agricultural land in the suit property. The case was found to be

covered by 3rd principle of **Suhrid Singh @ Sardool Singh's** case (supra) where the court fee was required to be affixed @10 times of land revenue in case of agricultural land.

[7]. Apparently, cause of action is dependent upon a bundle of facts and the maintainability of the suit in terms of Section 34 of the Act cannot be appreciated at this stage in view of consequential relief of possession claimed by the plaintiffs. The jurisdiction exercised by the trial Court in dismissing the application under Order 7 Rule 11 CPC cannot be faulted with as there is no apparent error of jurisdiction committed by the trial Court in rejecting the said application.

[8]. In view of above, this revision is found to be bereft of merits and the same is accordingly dismissed.

September 26, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No