

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

Civil Revision No.8044 of 2016
Date of decision: March 08, 2017

Kailash Chand Gupta ...Petitioners

Versus

Ranjna and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Aditya Jain, Advocate for the petitioner.

Rajan Gupta, J.

Present revision petition is directed against the order dated 02.11.2016, passed by Civil Judge (Jr. Division), Faridabad, whereby application under Order 7 Rule 11 CPC filed by petitioner/defendants has been dismissed.

Learned counsel for the petitioner has assailed the order. According to him, suit filed by the plaintiff was not maintainable being barred under Order 7 Rule 11 CPC. Plaintiff has to affix *ad valorem* on on the market value of the house in dispute. Besides, plaintiff has no cause of action, suit is barred by principles of *res judicata* and beyond limitation.

I have heard learned counsel for the petitioner and given careful thought to the facts of the case.

It appears, respondent No.1/plaintiff filed a suit seeking

declaration, permanent injunction, mandatory injunction as well as rendition of accounts on the ground that she along with her children are lawful owners in possession of House No.29, situated at Rishi Nagar, Ballabgarh, District Faridabad. Suit was contested by the defendants. They filed application under Order 7 Rule 11 CPC seeking rejection of plaint due to failure of the plaintiff to affix *ad valorem* court fee. Besides, suit was barred by principle of *res judicata* and limitation. The trial court dismissed the application, observing that these issues can only be decided after evidence is led by both the parties. I find no infirmity with the order passed. In my considered view, application is misconceived. Averments made therein cannot be treated as gospel truth and plaint cannot be rejected at initial stage. Mixed question of fact and law are involved. No interference in revisional jurisdiction is called for.

Dismissed.

(RAJAN GUPTA)
JUDGE

March 08, 2017
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No