

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

CR No.294 of 2017
Date of decision : 09.03.2018

Kanwaljit Singh and others

...Petitioners

Versus

Jagjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Himanshu Arora, Advocate for the petitioners.

ANIL KSHETARPAL, J. (ORAL)

The defendants-petitioners are in the revision petition against the order dismissing the application filed under Order 7 Rule 11 CPC, vide order dated 08.04.2016.

It was pleaded by the defendants-petitioners that the plaint does not disclose any cause of action. The cause of action is pleaded in para No.5 of the plaint, which is extracted as under:-

“5. That the cause of action arose in favour of the plaintiff as against the defendants on 1.1.2012 when they refused to make payment of the licence fee and also on the revocation of the licence which was duly revoked by the plaintiff and finally on the final refusal of the defendants to admit the claim of the plaintiff and to vacate the premises in question i.e. the portion which is in possession of defendant No.1 and to make payment of the amount in question and also not to carry out any addition, alteration or structural changes in

the property in question.”

Learned trial Court after examining this aspect of the matter, dismissed the application.

Learned counsel for the defendants-petitioners, who has got this revision petition listed after a period of 1 year and 6 months, asserts that the suit is not maintainable in the present form i.e. mandatory injunction. He submits that only declaratory suit could be filed.

A reading of the plaint shows that the plaintiff has asserted that the defendants are licencees and the possession has been sought from the licencee. Such being the position, the suit for mandatory injunction is maintainable.

Learned counsel for the petitioners has further argued that in the present case, the dispute would be with regard to the validity of the Will. He submits that the validity of the Will cannot be examined in a suit for mandatory injunction.

Learned counsel has admitted that the validity of the Will is subject matter of an issue framed by the Court in this suit.

In these circumstances, this Court does not find any good ground to interfere with the impugned order passed by the trial Court.

Revision petition is dismissed.

09.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No