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

**CR No.7887 of 2018
Date of Decision: 20.11.2018**

Rukmani Devi Nagpal and another

Petitioners

Versus

Master Lakshay and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Amarjit Kaur, Advocate
for the petitioners.

AVNEESH JHINGAN, J (Oral):

The present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 08.10.2018 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Faridabad (hereinafter referred to as 'the trial Court'), dismissing the application filed by the petitioners/defendants under Order VII Rule 11 of Code of Civil Procedure, 1908 (for brevity 'CPC').

Respondent No.1 filed a civil suit for partition, declaration with consequential relief of permanent injunction and partition of 1/3rd share of the property bearing No.1191, Sector 7-D, Faridabad.

The petitioners/defendants filed a written statement in the

suit stating that suit is not maintainable as no cause of action arise in favour of respondents/plaintiffs. Thereafter, an application under Order VII Rule 11 of CPC was filed. The application was dismissed by the trial Court vide order dated 08.10.2018.

Learned counsel for the petitioners/defendants argued that there is no document on record to show that Sanjay Nagpal was adopted son of petitioner/defendant No.1. It has further been argued that there was no cause of action for respondents/plaintiffs to file the suit.

The contention raised by learned counsel for the petitioners/defendants lacks merit. The respondents/plaintiffs had filed a suit through their natural guardian seeking declaration that they are absolute owner of 1/3rd share of the suit property and they are entitled to partition as per their share.

The suit has been filed on the premise that originally grand father of respondent/plaintiff was the absolute owner and after his death in the year 2006, their father and petitioners/defendants became the joint owner of the suit property. Father of respondents/plaintiffs is missing for more than three years and the petitioners/defendants were trying to alienate the property which forced them to file the suit.

The application was rejected by the trial Court as in the plaint there is no reference that Sanjay Nagpal was the adopted son of grand father of the respondents/plaintiffs. Further, it was evident from the plaint that respondents/plaintiffs were in possession of the

suit property, the issue whether they are entitled for partition or declaration is a controversy that needs to be decided on merits and on the basis of evidence to be adduced.

No case was made out for dismissing the suit under Order VII Rule 11 of CPC. No interference is called for in the order passed by the trial Court dismissing the application.

The civil revision is dismissed.

[AVNEESH JHINGAN]
JUDGE

November 20, 2018

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |