

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

238

Civil Revision No.32 of 2018

Date of Decision: October 14, 2019

Gopal Krishan Goel and others

.....petitioners

versus

Gian Chand Goel

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN Singh

Present: Mr. Namit Gautam, Advocate
for the petitioners.

Mr. Viren Jain, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

1. The petitioners have assailed the order dated 20.11.2017 passed by the Civil Judge (Jr. Division), Ludhiana vide which the application filed by the petitioners under Order 7 Rule 11 CPC was rejected.

2. Perusal of the record would show that a suit for declaration has been filed by the plaintiff on the ground that he is exclusive owner of the suit land on the basis of natural succession being the only IInd class heir of late Ram Sarup Gupta. Further declaration has been sought

against the Will allegedly executed by late Ram Sarup Gupta in favour of Ankush Goel-defendant No.1.

3. Parties have completed their pleadings and the suit has reached the stage of framing of issues. In the very nature of pleadings made in the plaint, it would be a debatable issue as to whether in the absence of second declaration sought by the plaintiff, the suit can proceed only on the premise of the plaintiff being a natural successor of late Sh. Ram Sarup Gupta. The plea in respect of Will could have been set up by the defendants by way of hostile title to the claim of the plaintiff and in such eventuality, it was onerous obligation of the defendants to prove execution of Will in order to discharge initial onus and thereafter, the plaintiff would lead any evidence of the Will being forged and fabricated.

4. At this stage, the rival pleas would give rise to triable issues even on the basis of previous litigation and filing of complaint by the plaintiff before the police authority. At the stage of Order 7 Rule 11 CPC, the consideration has to be given to the pleadings made by the plaintiff in the plaint. Assertion and denial would give rise to mixed question of law and facts, which would be decided by the trial Court at the relevant stage after leading evidence by both the parties.

5. At this stage, in my considered opinion, there is no scope for interference in this revision petition. The same is accordingly dismissed, however, petitioners would be within their right to move an appropriate application at the relevant stage in accordance with law.

October 14, 2019
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[RAJ MOHAN SINGH]
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No