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

CR No. 1054 of 2019

Date of Decision: 26.02.2019

Chet Ram (since deceased) through LR

-Petitioner

Vs

Government Middle School, Mindwan and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Naveen Batra, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.

Petitioner has preferred this revision petition against the order dated 24.01.2019 passed by Additional Civil Judge (Senior Division), Sri Anandpur Sahib vide which application under Order 7 Rule 11 CPC was dismissed.

An application was filed for rejection of plaint by defendants No.2 and 3 on the ground that the suit is barred as per provisions of Order 23 Rule 1 CPC.

Defendants No.2 and 3 claimed that Civil Suit No.18 filed on 04.01.2001 by the President of Parents-Teacher Association Committee of Govt. Middle School, Mindwan was got dismissed as withdrawn on the basis of statement made by Pyare Lal.

Previously, he was President of Govt. Middle School,

Mindwan and was authorized to institute the suit as per resolution of the association and that the Committee had elected a new President, as such he withdrew the suit.

The present suit was filed by the plaintiffs and the same was claimed to be barred in view of Order 23 Rule 1 CPC.

Evidently, at the stage of Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. Trial of the suit has reached the stage of framing of additional issue No.3-A to the following effect:

“3-A Whether the previously instituted suit by Piare Lal and act of withdrawal of the same by Piare Lal was result of connivance in between Piare Lal and Chet Ram and same was further result of fraud played upon the court and upon the present plaintiffs, if so, its effect? OPP.”

An application was filed by the defendant to decide the aforesaid issue as preliminary issue. Defendant has already closed his evidence after tendering certain documents.

At this stage of litigation, filing of application under Order 7 Rule 11 CPC cannot be entertained.

It is a settled principle of law that if the pleadings of the plaint have created an illusion in respect of cause of action,

defendant can resort to Order 10 in view of law laid down in **Church of Christ Charitable Trust & Educational Charitable Society v. Ponnamman Educational Trust, (2012) 8 SCC 706.**

Defendant cannot turn back to the initial stage, rather to go ahead to the stage of Order 10 CPC.

In view of aforesaid factual position, the law laid down in **University of Agricultural Sciences vs Smt. Saroj Gupta, 2017(7) MLJ 726** would not come to the aid of the petitioner. Similarly, the law laid down in **Lal Singh vs Ajit Singh and others, 2008(3) RCR (Civil) 650** cannot be applied in view of aforesaid factual position.

Pleadings of the earlier suit are legally required to be proved with reference to evidence.

For the reasons recorded hereinabove, I do not find any justification to interfere in the impugned order passed by the trial Court.

This revision petition is accordingly, dismissed.

26.02.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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