

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

C.R. No.3784 of 2019

Date of Decision.31.05.2019

Rajiv Sharma

...Petitioner

Vs

Neelam Sharma and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Hitesh Pandit, Advocate
for the petitioner.

-:-

AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order (Annexure P-5) whereby application of the petitioner-defendant under Order 7 Rule 11 CPC for rejection of the plaint, has been dismissed.

The respondents-plaintiffs sought relief of declaration along with defendants to the extent of 1/4th share each and separate possession and also challenged the transfer by Nishi Kant Sharma and Asit Sharma, predecessors-in-interest of the plaintiffs.

Mr. Hitesh Pandit, learned counsel appearing for the petitioner submitted that transfer was effected in 2009. Both the transferors had executed affidavit which was submitted in the Haryana Housing Board whereas the suit has been filed in the year 2017, thus, hit by law of limitation as well as the non-payment of court fee qua relief of declaration and separate possession. Though the petitioner-defendant has filed written statement but continuation of the suit would be a farcical exercise.

I have heard learned counsel for the petitioner, appraised

the paper book and of the view that there is no force and merit. The relief aforementioned has been sought by alleging the transfer to be fraud and fabricated documents. Since the defendant has already taken all possible objections, he can always press for framing of issues but the suit claiming declaration of ownership and separate possession i.e. partition cannot be thrown out by invoking provisions of Order 7 Rule 11 CPC, as for adjudication of the aforementioned provisions of law, averments in the plaint are to be seen. There would have been force, had, *prima facie*, pleadings of the suit appeared to be expressly barred by law.

In view of aforementioned circumstances, I do not find any illegality and infirmity in the order challenge. No ground for interference is made out. Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 31, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No