

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

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**CR No. 3324 of 2022
Date of decision : 10.10.2022**

Gurdev Singh**.....Petitioner****Vs.****Harvinder Singh****.....Respondent****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Arun Kumar Goyat, Advocate, for the petitioner

Mr. Mrigank Sharma, Advocate, for the respondent

TRIBHUVAN DAHIYA, J. (Oral)

1. This revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 28.7.2022 passed by the trial Court, dismissing the petitioner/defendant's application for rejection of plaint filed under Order VII Rule 11 CPC.

2. The respondent/plaintiff filed a suit for permanent injunction restraining the petitioner/defendant himself or through his agents from interfering in his peaceful possession over the house, as shown in the site plan attached with the plaint. Before filing the written statement, the petitioner/defendant filed an application dated 10.11.2021 (Annexure P-3) under Order VII Rule 11 CPC for rejection of plaint, which was dismissed by the trial Court vide order dated 28.7.2022.

3. It has been argued by learned counsel for the petitioner that the suit for permanent injunction has been filed in the year 2021 based on a registered Will dated 27.5.1988; it is, therefore, not maintainable. Besides,

no particulars of the house in question have been disclosed in the plaint. He has further submitted that simpliciter suit of permanent injunction is not maintainable as no declaration has been sought by the respondent/plaintiff.

4. While deciding an application under Order VII Rule 11 CPC, the Court is only to consider averments made in the plaint and not the strength and weaknesses of the plaintiff's case. A perusal of the plaint establishes that the suit for permanent injunction has been filed regarding a house where the plaintiff's father is statedly residing. This house is duly marked as per the site plan attached with the plaint. Besides, it is numbered as House No.145 (old House No. 138). The defendant's property has been shown in Green colour in the attached site plan and numbered as House No. 146. It has further been averred that plaintiff is owner in possession of the suit property and other properties on the basis of a registered Will dated 27.5.1988 executed by Sh. Sada Ram, who expired on 15.7.2006. By virtue of this Will, mutation no. 3882 dated 9.10.2017 was sanctioned in favour of the plaintiff. The property being in the *abadi deh* of the village, there is no registered record available, and the plaintiff and his father are having possession over the suit property since the lifetime of Sada Ram.

5. In the face of these averments, the trial Court dismissed the application for rejection of plaint by holding that reading of the plaint *prima facie* disclosed cause of action to the plaintiff. The objection to maintainability of the suit on the ground of limitation, was also held to be not tenable as contentions of both the parties need to be proved by leading evidence during trial. Further, there is no provision of law which bars filing of the suit for permanent injunction based on possession over the property.

6. The order passed by the trial Court is well reasoned and suffers from no infirmity.

7. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

10.10.2022
Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No