

C. R. No.3046 of 2023
-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.379(2)

Case No. : C. R. No.3046 of 2023

Date of Decision : April 04, 2024

Sanjay Fotedar Petitioner
vs.
Smt. Rattan Rani Fotedar and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sandeep Vermani, Advocate
with Mr. Aditya Vermani, Advocate
for the petitioner.

Mr. V. K. Shali, Senior Advocate
with Mr. Kuljit Singh, Advocate
for the respondents (*through Video Conferencing*).

* * *

GURBIR SINGH, J. :

1. Challenge in this petition, filed under Article 227 of the Constitution of India, is to the order dated 13.03.2023 (Annexure P-4), passed by learned Civil Judge (Junior Division), Gurugram (hereinafter referred to as – the Trial Court), whereby application moved by the petitioner (hereinafter referred to as – defendant no.2), under Order 7 Rule 11 CPC, for rejection of plaint, has been dismissed.

2. The facts in brief, which are necessary for adjudicating the present petition, are that respondent no.1 – Rattan Rani (hereinafter referred to as – the plaintiff) filed a suit for possession under Section 6 of the Specific Relief Act, 1963 against petitioner/defendant no.2 and Dr. Jitender Fotedar –

C. R. No.3046 of 2023

-2-

respondent no.2/defendant no.1, in which relief to restore the possession of master bedroom with attached dressing and washroom on the first floor of property No.C-2/72-73, Lord Krishna Enclave, Sushant Lok-1, Gurugram (for short – suit property) has been sought. It has been contended that the suit property was under her possession and the same was forcibly occupied by the defendants.

3. Learned counsel for the petitioner has argued that the aforesaid suit was filed by the plaintiff through her daughter being her authorized representative and guardian namely Mrs. Rashmi Shali, who has also verified the plaint. The averments in the plaint are contradictory and inconsistent. No ‘Power of Attorney’ has been placed on record. No application for seeking permission to appoint guardian/next friend has been filed. The mandate of sub-rule 3 and 4 of Rule 3 under Order XXXII CPC have not been complied with.

4. Learned senior counsel for the respondent no.1/plaintiff, who has appeared through Video Conferencing, has submitted that for deciding an application under Order 7 Rule 11 CPC, for rejection of plaint, only averments in the plaint are to be seen. The suit has been filed for restoration of possession because the plaintiff was dispossessed from a portion of the house under her occupation. She is about 80 years old and has filed the suit against her sons. She is not able to protect her rights, so, she has filed the suit through her daughter.

5. I have heard the submissions of learned counsel for the parties and perused the case file.

C. R. No.3046 of 2023
-3-

6. The suit has been filed by a mother against her two sons for restoration of possession of a house, from where she has been dispossessed and where she has been residing with her husband before he expired. The suit is simply for restoration of possession and same is based on specific cause of action. The suit is not barred under any law. It is neither under-valued nor insufficiently stamped. If any contradictory plea is taken by the plaintiff, that would be a question of trial and the plaint cannot be rejected on this ground alone. The non-placing of ‘Power of Attorney’, at the most, can be considered as a curable defect but cannot be said to be a ground to reject the plaint.
7. In view of what has been discussed above, the present revision petition is without any merit and the same is accordingly dismissed.
8. Pending applications, if any, shall stand disposed of along with this judgment.

April 04, 2024
monika/renu

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.