

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****135****CR-2391-2025 (O&M)****Date of decision: 24.04.2025****Rattan Wati and others****...Petitioner(s)****Vs.****Savita Choudhary and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Amit Jain, Advocate for the petitioners.

*********NIDHI GUPTA, J.**

The present civil revision petition under Article 227 of the Constitution of India, has been filed by defendants No. 2 to 5 for setting aside the order dated 20.02.2025 (Annexure P-4) passed by the learned Civil Judge (Junior Division) Gurugram, whereby application (Annexure P-2) filed by the petitioners under Order 7 Rule 11 r/w Section 151 CPC, has been dismissed.

2. Brief facts of the case are that the plaintiff/respondent No.1, had filed civil suit for declaration and temporary and permanent injunction on 28.08.2024 (Annexure P-1). In the said suit, the petitioners filed the present application under Order 7 Rule 11 read with Section 151 CPC on 03.09.2024 (Annexure P-2); to which the plaintiff filed reply dated 28.08.2024 (Annexure P-3). The petitioner had sought rejection of the plaint primarily on the ground that the plaint does not disclose any cause of



action. Vide the impugned order dated 20.02.2025 (Annexure P-4), the said application of the petitioners has been dismissed.

3. It is submitted by learned counsel for the petitioners that learned trial Court was in patent error in dismissing the petitioners' application as the plaint (Annexure P-1) discloses no cause of action whatsoever. It is submitted that the plaintiff had filed the suit claiming encroachment on rasta but had not placed on record any document which reflects the said rasta or the dimensions thereof. Even the suit land is not described in the plaint. It is further alleged that the plaintiff had filed the suit merely with a malafide intent to harass the petitioners.

4. It is further contended that the plaintiff has not complied with the mandatory provision of Order VII Rule 1 (e), (f), (i) & (j) of CPC as the plaintiff has not stated the facts constituting cause of action. The plaintiff has not even disclosed that the Court has jurisdiction. No statement of value of the subject matter of the suit for the purposes of jurisdiction and of Courts fees have been disclosed. In this regard, Learned counsel refers to the application (Annexure P-2) as also to the pleadings in para 3 of the present petition wherein it has been averred that *"plaintiff has not complied with the mandatory provision of Order VII Rule 1 (e), (f), (i) & (j) of CPC, plaintiff has not stated the facts constituting the cause of action and when it arose, the fact showing that the court has jurisdiction, a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits, and statement to effect that any other suit is pending or not. All above facts are necessary to be given in*



the suit and as they have not been mentioned present suit is liable to be rejected under Order VII CPC.”

5. In support, learned counsel for the petitioners has relied upon the judgment of Hon’ble Supreme Court passed in “**A.B.C.Laminart Pvt.Ltd. And another vs. A.P.Agencies Salem**” **Law Finder Doc Id # 89281**; wherein in para 12 thereof, it is held that “*a cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.*” It is accordingly submitted that the impugned order deserves to be set aside.

6. No other argument is raised on behalf of the petitioners.

7. I have heard learned counsel for the petitioners/defendants No.2 to 5 and perused the case file in great detail.

8. I find no merit whatsoever in the submissions advanced by learned counsel for the petitioners. It has firstly been contended by learned counsel for the petitioners that the plaint does not disclose any cause of action. However, perusal of the plaint (Annexure P-1) reveals that the plaintiff has filed a suit for declaration and temporary and permanent injunction stating that she along with her family is resident of the address as mentioned in the memo of parties since the past 50 years. It is further stated in para 1 of the plaint that the common entrance street/road leading



to the plaintiff's house was 25 feet wide, on which some construction has been done and some ongoing by the petitioners as a result of which only 5 feet public passage has been left now. Along with the plaint, the plaintiff has attached Photographs of the ongoing construction/ blocked wall/iron gate and illegal animal husbandry as Annexure-A to G; and videography of all illegally occupied area/ongoing construction and animal husbandry in Pen Drive is attached as Annexure-H. It is further alleged that the illegal construction of the petitioners/defendants has blocked off the public way which is not just violation of Municipal Corporation Act, 1994 but is also causing great harassment to the plaintiff as the petitioners for their personal gain, have blocked off the public road and street as well as way to entrance of the house of the plaintiff. It is my considered view that a bare reading of the above said averments made by the plaintiff disclose a veritable cause of action against the petitioners. It has been clearly and categorically alleged in the plaint that the petitioners have blocked the public path by raising illegal constructions which is not only violation of law but is also causing great harassment to the plaintiff.

9. It has further been argued by the petitioners that no document was attached by the plaintiff to show such encroachment. However, the plaintiff has duly produced photographs along with videography recording in pen drive alongwith the plaint as Annexures A to H, and other documentary evidence to show that the public street and talab, park, road have been encroached upon by the petitioners. The plaintiff has duly submitted photographs, video and documentary evidence showing



existence of rasta, public street on the spot in question. Clearly therefore, the plaintiff has made specific and direct allegations against the petitioners substantiated by documentary evidence. Thus, the grounds on which the petitioners sought rejection of the plaint appear to be unfounded.

10. Moreover, it is established position in law that in an application under Order VII Rule 11 CPC, only the averments made in the plaint can be seen. The Hon'ble Supreme Court in numerous judgments including ***Eldeco Housing and Industries Ltd. vs. Ashok Vidyarthi and others***, Law Finder Doc ID # 2406865, has repeatedly held that no evidence or merits of the controversy can be examined at the stage of deciding rejection of a plaint in an application under Order VII Rule 11 CPC; and that only the averments made in the plaint would be relevant for invoking Order VII Rule CPC. Again, in ***Kamla and others vs. K.T. Eshwara Sa & Others***, (2008) 12 SCC 661, the Hon'ble Supreme Court opined that for invoking Order VII Rule 11 CPC, only the averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. Reference may also be made to three-Judge Bench judgment of Hon'ble Supreme Court in ***"Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Others"*** Law Finder Doc ID # 1865777, wherein it has been held that *"...In order to reject a plaint for the suit being barred by any law under Order 7 Rule 11(d), the court needs to be guided by the averments in the plaint and not the defence taken."* It has been categorically held that the grounds taken by the defendant as defence cannot be taken into account while rejecting a plaint under Order 7 Rule 11 CPC.



11. Furthermore, the petitioners can derive no benefit from the relied-upon judgment passed in ***A.B.C. Laminart Pvt. Ltd. (supra)*** as the same is distinguishable on facts and law. Reliance of the petitioners on the said judgment is misconceived as, in the present case, the plaint definitely discloses cause of action.

12. I am thus, in complete agreement with the reasoning as contained in para 6 of the impugned order, which reads as under:-

“Upon examining the plaint, it is evident that the plaintiff has stated material facts that form the basis of his claim, including the allegation of encroachment on the Rasta and obstruction to access due to illegal construction. The mere fact that the defendants deny the allegations or challenge the sufficiency of the evidence is not a ground for rejecting the plaint at this stage. The defendants' arguments go to the merits of the case, which can only be adjudicated after full trial and examination of evidence.”

13. Hence, no ground is made out to interfere in the order dated 20.02.205 (Annexure P-4). The present revision petition is hereby **dismissed**.

14. Pending application, if any, stands disposed of.

24.04.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No