

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****123****CR-3472-2025 (O&M)****Date of decision: 01.07.2025****Ashok Kumar Malik****...Petitioner(s)****Vs.****Narender alias Nittu and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Hemant Hans, Advocate
for the petitioner.

NIDHI GUPTA, J.

The present Civil Revision Petition has been filed by the petitioner/defendant under Article 227 of the Constitution of India for setting aside the impugned order dated 07.05.2025 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Rohtak whereby the Application filed by the petitioner under Order 7 Rule 11 CPC, in Civil Suit No. 1179 of 2017 titled as "*Narender alias Nittu vs Ashok Kumar Malik*" (Annexure P-2) for rejecting the plaint on the ground of non-payment of court fees, has been dismissed.

2. Learned counsel for the petitioner *inter alia* submits that a perusal of the plaint (Annexure P-2) reveals that in actual fact, the relief sought by the plaintiffs/respondents, is possession of the suit premises. It is submitted that this is proved from the fact that the respondent has sought a decree of mandatory injunction directing the petitioner to remove his belongings from the suit property. Learned counsel contends



that this proves that petitioner is in possession of the suit property. However, the plaintiffs have merely drafted the plaint cleverly and have not clearly prayed for possession. Ld. Counsel contends that mere clever drafting cannot absolve the plaintiffs of their liability to pay Court fees as per the market value of the suit property. However, the learned Trial Court has failed to appreciate this aspect of the matter.

3. Ld. counsel for the petitioner further submits that in respect of the suit property, the petitioner had previously filed another suit for declaration and permanent injunction. In the said suit vide judgment and decree dated 04.11.2015 (Annexure P-3), the learned Civil Judge (Junior Division), Rohtak had given a categorical finding that the petitioner and his family members were having possession of suit property. It is submitted that therefore, it is clear that by way of the present suit, the plaintiffs are seeking possession of the suit property from the petitioner. However, only because of clever drafting the plaintiffs had prayed for grant of permanent and mandatory injunction restraining the petitioner from dispossessing them; whereas in actual fact, respondents are seeking possession of the suit premises. It is submitted that in this view of the matter it was incumbent upon the plaintiffs to pay Court fees as per the market value of the suit property. However, learned trial Court has failed to appreciate correct facts of the matter. It is accordingly prayed that the present Civil Revision Petition be allowed; and the impugned order dated 07.05.2025 (Annexure P-1) be set aside.

4. No other argument is made by Id. counsel for the petitioner.



5. Heard learned counsel and perused the case file in great detail.

6. I find no merit whatsoever in the submissions made on behalf of the petitioner. Brief facts of the case are that the plaintiffs/respondents had filed a suit dated 07.10.2017 (Annexure P-2) seeking permanent and mandatory injunction in respect of the suit property describable as House no. 824/29, Kamal Colony, Rohtak. Prayer of the plaintiffs is as follows: -

“It is therefore prayed that the suit of the plaintiff may kindly be decreed with costs and decree for permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiffs and also from dispossessing them from the house in question stated in para no.3 of the plaint and also described in the site plan attached with the plaint as Annexure A may kindly be passed in favour of plaintiffs and against defendant and defendant be restrained by granting a decree for permanent injunction from dispossessing the plaintiffs from the house in question and also from interfering in their peaceful possession in respect of the house in question enumerated in para 3 of the plaint and also described in the site-plan Annexure X attached with the plaint and further a decree mandatory injunction directing the defendant to the effect that he should remove his charpai, chair, scooter etc from the house in question be also passed in favour of the plaintiffs and against the defendant, with costs.”

7. A bare reading of the above clearly shows that no prayer for possession has been made by the respondents. It is the contention of the petitioner that because the respondents were seeking mandatory



injunction directing the petitioner to remove his personal belongings in the form of charpai, chair, scooter etc. from the suit house, therefore, possession of the petitioner over the suit house is proved. The petitioner has further relied upon judgment dated 04.11.2015 (Annexure P-3), as per which petitioner was found to be in possession of the suit property. However, both the above arguments of the petitioner are misleading.

8. A perusal of judgment dated 04.11.2015 (Annexure P-3) shows that the petitioner had filed a suit seeking declaration to the effect that sale deed bearing No. 7410 dated 13.09.2011 executed by defendant No.3 therein, namely Harnarain Malik/father of the petitioner, in respect of the present suit property, in favour of the plaintiffs/respondents herein/defendants No. 1 and 2 therein, was illegal and sham document. Petitioner had also sought a decree of permanent injunction restraining the respondents from dispossessing or evicting the petitioner from the suit house. However, the said suit of the petitioner was dismissed by the learned Civil Judge (Junior Division), Rohtak vide aforesaid judgment and decree dated 04.11.2015 (Annexure P-3) as it was categorically found that the petitioner alongwith his family members was in unauthorized possession of the suit property. Findings of the learned trial Court are contained in para 17 of the said judgment, which reads as under: -

“17. Therefore, in view of all the documents and all the testimonies of plaintiff's witnesses, it is taken proved that plaintiff along with his family members is having possession over the suit property but same is unauthorized as the owner



*of the property i.e. his father (defendant) no.3) has alienated said property in favour of defendants no. 1 and 2. The perusal of the statement of defendants witnesses shows that efforts have been made to get vacated the suit property from plaintiff but plaintiff has not vacated the same. When the suit property has already been sold out to defendants no. 1 and 2, the plaintiff has no right to retain the possession of the suit property. Permanent injunction cannot be granted to the person in illegal and unauthorized possession. In this regard, I have relied upon the authority titled as **Gorishankar Vs. Dr. Jagmohan Prasad Agarwal & others 2014(3) CCC, 100 (Rajasthan)** wherein it was observed that defendant allowed plaintiff to stay in the part of his house gratuitously. Plaintiff had misused the process of law by filing suit for permanent injunction, which is not maintainable in the eye of law. Held, in absence of any valid and subsisting lease or licence or rent agreement, petitioner cannot be granted any injunction or permitted to retain possession of the suit premises.”*

9. A bare reading of the above shows that the petitioner was found to be in unauthorised occupation of the suit property. It was also found that despite efforts, petitioner had refused to vacate the suit premises. Admittedly, Appeal filed against the above judgment was dismissed by the learned 1st Appellate Court. Second Appeal against the same is stated to be pending before this Court. Thus, merely because respondent has prayed that petitioner be directed to remove his personal effects from the suit property, does not in any manner establish possession of the petitioner.

10. It is also to be considered that the petitioner has filed the present application (Annexure P-4) under Order 7 Rule 11 CPC on dated



26.03.2025 when the matter was at the stage of final arguments after rebuttal evidence had also been closed by the plaintiffs. Clearly, therefore, the present application has been filed by the petitioner with an intent to delay the suit.

11. In view of the above, I find no ground is made out to interfere in the impugned order dated 07.05.2025 (Annexure P-1). The present Civil Revision Petition, accordingly, stands **dismissed**.

12. Pending application(s) if any also stand(s) disposed of.

01.07.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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