



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

CR-6178-2023 (O&M)

Date of Decision: November 11, 2025

Baldev Raj Kakkar

...Petitioner

Versus

Gulshan Kumar Kakkar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Deepam Ragav, Advocates
for the petitioner.

Mr.Tanmoy Gupta, Advocate
for respondents No.1 to 3.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 21.09.2023 passed by learned trial Court, whereby, an application under Order 7 Rule 11 CPC, filed at the instance of the petitioner-defendant No.1, seeking rejection of the plaint, was dismissed.

For the convenience of discussion, the parties are referred to, as making appearance before learned trial Court.

The essential facts, as culled out from the paperbook, are as follows:-

That, initially plaintiffs-Gulshan Kumar Kakkar, Suman Khanna and Manju Malik (respondents No.1 to 3 herein) had filed a suit for declaration,

possession by way of partition along with consequential relief of permanent injunction against their two brothers namely, Baldev Raj Kakkar-defendant No.1 (petitioner herein), Ghanshyam-defendant No.2 and Haryana Urban Development Authority-defendant No.3 (HUDA). In the suit, they asserted about their father Jagan Nath Kakkar to be owner of the suit property and being his legal heirs, they have inherited the suit property in equal 1/5th share each, by way of inheritance. However, in the other suit filed at the instance of Ghanshyam-defendant No.2, had claimed partition of the house. Therein, defendant No.1-Baldev Raj Kakkar, who was also impleaded as defendant No.1 in the suit, filed at the instance of Ghanshyam, had made appearance and set up a Will dated 08.11.2006 of Sh.Jagan Nath Kakkar, which was allegedly registered on 30.10.2019, after a gap of more than 12½ years.

The plaintiffs came to know about the same, as they were also impleaded as party in the said suit filed by Ghanshyam and they also came to know about re-allotment letter dated 18.12.2020 from HUDA, on the basis of the Will and a conveyance deed executed by HUDA, in favour of defendant No.1-Baldev Raj Kakkar on 29.01.2021 and registered on 09.02.2021. The plaintiffs asserted about the said Will to have been manipulated by defendant No.1, in collusion with the witnesses. In the said suit, the plaintiffs had sought declaration, vis-a-vis, legality and validity of the Will dated 08.11.2006 and also asserted about themselves to be owners to the extent of 3/5th share, while defendants No.1 and 2, to be owners to the extent of 2/5th share.

Besides seeking partition by metes and bounds of the suit, had also

sought injunction to restrain the defendants from alienating the suit property.

In pursuance of the notice issued, the defendants made appearance through counsel and filed reply.

The evidence was adduced by the parties. However, as evident from the impugned order, when the case was at the stage of final arguments, an application under Order 7 Rule 11 CPC was filed, at the instance of defendant No.1-Baldev Raj Kakkar. In the application under Order 7 Rule 11 CPC, defendant No.1-petitioner had asserted about the suit to be not maintainable and that relief of declaration and possession, as claimed by the plaintiffs-respondents No.1 to 3, is cleverly cloaked behind the garb of joint ownership, whereas, the suit property has been bequeathed to defendant No.1-petitioner by way of Will dated 08.11.2006 and on the basis thereof, re-allotment was made by HUDA.

In the given circumstances, it was averred that the Court fee was required to be affixed and therefore, defendant No.1-petitioner had sought rejection of the plaint under Order 7 Rule 11 CPC.

Reply was filed and thereupon, after hearing counsel for the parties, vide impugned order, the aforesaid application was dismissed.

Being aggrieved, petitioner-defendant No.1 has filed the revision petition in hand.

In pursuance of the notice issued, the contesting respondents No.1 to 3 made appearance through counsel.

Counsel for the parties heard.

As observed aforesaid, the relationship between the parties, as such, is not disputed. The plaintiffs, who are respondents No.1 to 3 before

this Court, are the real brother and sisters of petitioner-Baldev Raj Kakkar and Ghanshyam, who were impleaded as defendants No.1 and 2 before learned trial Court. The plaintiffs had sought declaration, vis-a-vis, legality and validity of the Will dated 08.11.2006, asserted by defendant No.1, on the basis whereof, he claims his right over the suit property. It is not disputed that suit property was the ownership of Sh.Jagan Nath Kakkar, father of the plaintiffs as well as defendants No.1 and 2. The alleged Will has been set up by defendant No.1-Baldev Raj Kakkar, one of the brothers of the parties to the lis. The plaintiffs have questioned the legality and validity of the said Will.

Though, in the plaint, copy whereof is coming on record, there is no specific mention made about the natural inheritance, but however, it is evident that on the basis of natural inheritance only, the plaintiffs have asserted their right to the extent of 3/5th share. However, it is the Will basically, which has been challenged by the plaintiffs. In the light of the same, their share to the property, in the eventuality of the Will, not being accepted, has to be considered and to what extent, this is also to be defined, only after the evidence, is adduced on record. The share of the plaintiffs, as such, cannot be determined, at this stage. In fact, it is a mixed question of law and fact, vis-a-vis, the right of the plaintiffs qua the suit property.

In the given circumstances, the right of the plaintiffs to the suit property and the extent thereof, cannot be appraised minutely, at this stage, till the trial Court records any kind of finding, with regard to the legality and validity of the Will. Therefore, there is no merit in the application for rejection of the plaint.

In view of the aforesaid observations, learned trial Court has correctly dismissed the application filed for rejection of the plaint. Hence, the impugned order brooks no interference, while exercise of revisional jurisdiction. As such, the revision petition sans merit and the same is hereby dismissed.

November 11, 2025	(ARCHANA PURI)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	Yes/No