



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

CR-6597-2025

DECIDED ON: 29.10.2025

AJAY KUMAR GOYAL

.....PETITIONER

VERSUS

RAVINDER KUMAR GOYAL AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Kashish Garg, Advocate
for the petitioner.

MANDEEP PANNU, J (ORAL)

1. The present civil revision petition under Article 227 of the Constitution of India has been filed by the petitioner–defendant for setting aside the order dated 22.07.2025 passed by the learned Civil Judge (Junior Division), Bathinda, whereby the application filed by the petitioner under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure for rejection of the plaint has been dismissed.

2. The brief facts giving rise to the present petition are that the petitioner–defendant and the respondents–plaintiffs are real brothers, being the sons of late Sh. Parshotam Das Goyal, son of Sh. Banarsi Das Goyal. After the demise of Sh. Parshotam Das Goyal, a dispute arose between the parties with respect to his estate, comprising both movable and immovable properties, bank accounts, fixed deposits, and valuables lying in bank lockers. The plaintiffs–respondents instituted a suit for declaration before the

learned trial court to the effect that they, along with the defendant, are entitled to inherit the estate of their deceased father in equal proportion, and further that the defendant, who had received the amounts from various bank accounts of the deceased as a nominee, is bound to distribute the same equally amongst all the legal heirs. The plaintiffs also sought a declaration with respect to immovable properties left behind by the deceased and a permanent injunction restraining the defendant from alienating or withdrawing the remaining estate including funds from account no. 0050000102036012 maintained with Punjab National Bank, Bank Street (now Hanuman Chowk), Bathinda.

3. Upon notice of the suit, the defendant appeared and filed an application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint. It was contended in the said application that the suit, as framed, was not maintainable and was barred by the provisions of Sections 34 and 41(h) of the Specific Relief Act, 1963, since the plaintiffs had an efficacious alternative remedy of seeking a succession certificate in respect of the estate of the deceased under the provisions of the Indian Succession Act. It was further pleaded that the plaintiffs were not entitled to any share in the property of the deceased, as during his lifetime, an oral family settlement had taken place wherein all parties had received their respective shares. It was also urged that the plaintiffs had not sought any consequential relief of recovery of money, and therefore the mere declaratory suit was barred by law.

4. The plaintiffs-respondents filed their reply contesting the application, submitting that the rigour of the proviso to Section 34 and Section 41(h) of the Specific Relief Act, 1963 was not attracted in the facts

of the present case. It was asserted that the defendant, having received the amounts from the banks as a nominee, was holding the same in a fiduciary capacity as a trustee for the benefit of all the legal heirs. The plaintiffs further contended that by not distributing the said amount, the defendant had denied their legal character as co-heirs, which gave rise to the cause of action for seeking a declaration of their rights. It was further contended that once the amount had already been withdrawn by the defendant, the remedy of obtaining a succession certificate no longer survived, and the present declaratory suit was the only proper course available for enforcement of their right as legal heirs.

5. After hearing both sides, the learned trial Court dismissed the application of the defendant vide order dated 22.07.2025. The trial Court observed that while considering an application under Order VII Rule 11 CPC, it is only the averments in the plaint which are to be looked into and not the defence raised by the defendant. It was held that the plaint disclosed a clear cause of action and the dispute involved several disputed questions of fact which could only be decided after evidence was led by the parties. The learned trial Court further observed that the provisions of Order VII Rule 11 CPC are mandatory in nature, but the power to reject the plaint can only be exercised when the plaint on its face is barred by law or discloses no cause of action, which was not the case here. The Court relied upon the settled law laid down by the Hon'ble Supreme Court in '**Kuldeep Singh Pathania v. Bikram Singh Jaryal (2017 AIR SC 593)**', '**Rashtriya Gaushala Dharoli v. Shree Gaushala Mandir Safidon' (CR No. 20 of 2025)**', and '**Srihari Hanumandas Totala v. Hemant Vithal Kamath**', 2021 (3) RCR (Civil) 768 to hold that a plaint cannot be rejected merely because the defendant claims

that the plaintiff has an alternate remedy or that the claim may ultimately fail on merits. The learned trial Court, therefore, dismissed the application with the observation that the controversy involves questions of fact and law which could be decided only after evidence is recorded.

6. Feeling aggrieved, the petitioner–defendant has approached this Court by way of the present civil revision petition.

7. Learned counsel for the petitioner has reiterated the arguments advanced before the trial Court and has contended that the impugned order suffers from material irregularity and illegality as the learned Court failed to appreciate that the plaintiffs-respondents have suppressed the fact of prior family settlement and have not sought consequential relief of recovery, rendering the suit barred under Section 34 of the Specific Relief Act, 1963.

8. The matter being limited in scope and involving a short question of law, no notice was considered necessary to be issued to the respondent.

9. Having heard learned counsel for the petitioner–defendant and perused the record, this Court is of the considered view that the impugned order dated 22.07.2025 passed by the learned Civil Judge (Junior Division), Bathinda, does not suffer from any patent illegality or material irregularity warranting interference in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

10. The learned trial court, while dismissing the application filed under Order VII Rule 11 CPC, has rightly held that the question whether the plaintiffs are entitled to a share in the estate of late Sh. Parshotam Das Goyal, or whether the defendant has acted merely as a trustee by virtue of being the nominee in the bank accounts and FDRs of the deceased, are

matters involving mixed questions of law and fact which can be adjudicated only after parties lead their respective evidence during trial. The learned court has recorded a speaking and reasoned order, taking into consideration the settled proposition of law that, at the stage of deciding an application under Order VII Rule 11 CPC, the Court has to confine itself to the averments made in the plaint and cannot enter into disputed factual issues.

11. The plea raised by the petitioner that the plaintiffs have an alternate and efficacious remedy under the Indian Succession Act by way of applying for a succession certificate, and therefore the suit for declaration is barred under Section 34 and Section 41(h) of the Specific Relief Act, 1963, has also been duly considered by the trial court. The learned court has rightly observed that the bar under Section 41(h) is not absolute and depends upon the nature of the relief sought.

12. In the present case, the plaintiffs have sought a declaration regarding their legal character and entitlement to the estate of the deceased, which they claim, the defendant has denied by not distributing the amounts received as a nominee. Such a declaration is specifically covered by Section 34 of the Specific Relief Act, 1963, and the plaintiffs are not bound to claim any consequential relief of recovery at this stage, as the same would arise only if their legal character as co-heirs is first established.

13. It is well settled that the nominee of a bank account or locker is merely a trustee for the legal heirs and is under a fiduciary duty to distribute the estate of the deceased in accordance with law. Therefore, the claim of the plaintiffs cannot be rejected at the threshold merely because they have not sought a succession certificate, especially when the defendant has already

withdrawn the money as nominee and is alleged to be withholding it from the rightful heirs.

14. The trial court has further relied on binding precedents, including *Kuldeep Singh Pathania's case (supra)*, *Rashtriya Gaushala Dharoli's case (supra)* and *Srihari Hanumandas Totala's case (supra)*, to hold that a plaint cannot be rejected unless it clearly discloses no cause of action or is barred by any law. The learned court found that none of these conditions were satisfied in the present case.

15. In view of the above discussion, this Court finds no infirmity, perversity, or jurisdictional error in the impugned order dated 22.07.2025 warranting interference. The order passed by the learned trial court is well reasoned and based on settled principles of law.

16. Accordingly, the civil revision petition stands dismissed.

17. However, it is clarified that any observation made herein shall not be construed as an expression of opinion on the merits of the case, and the trial court shall proceed to decide the suit independently in accordance with law.

18. All pending miscellaneous application(s), if any, stands disposed of.

29.10.2025

Poonam Negi

**(MANDEEP PANNU)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No