

2026:PHHC:079882



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

CR-6565-2024 (O&M)

Reserved on: May 01, 2026

Date of Pronouncement: May 21, 2026

Uploaded on: May 21, 2026

Sarita Mittal and another

...Petitioners

VERSUS

Nirupama Kishore and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Chetan Mittal, Senior Advocate, with
Mr. Kunal Mulwani, Mr. Dhananjay Mittal and
Mr. Vikas Thakur, Advocates for the petitioners.

Mr. R.K.Kapoor and Mr. Ravindra Jain, Advocates
for respondent No.1.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated
19.09.2024 passed by learned trial Court, whereby, an application under
Order VII Rule 11 CPC, filed by the defendant No.1 was dismissed.

In pursuance of the notice issued, respondent No.1-plaintiff
made appearance through counsel.

The facts germane, to be noticed, as culled out from the
paperbook, are herein given:-

That, respondent No.1-plaintiff filed a suit for decree of declaration by
separate possession by actual partition by metes and bounds, vis-a-vis, suit



property, while challenging the legality and validity of the transfer deed dated 09.04.2019. Besides the same, also sought issuance of mandatory injunction to direct the registering authority to cancel the registration of the transfer deed dated 09.04.2019. Also, the plaintiff sought permanent injunction to restrain the defendants from alienating the suit property and further raising construction over the same, till the partition by metes and bounds and also sought decree for recovery of mesne profits/damages and rendition of accounts.

It is claimed in the plaint that the suit property was purchased by defendant No.3, which is Hindu Undivided Family, namely R.S.Mittal, (HUF), consisting Mr.R.S.Mittal, Karta, Mr.Sudhir Mittal-defendant No.2 and Mrs.Nirupama Kishore-plaintiff, as its members. The suit property was purchased and constructed for the benefit of the members of HUF and has been owned jointly by them, since its re-allotment to defendant No.3 on July 14, 1993. The plaintiff being daughter of defendant No.1 and member/coparcener of R.S.Mittal (HUF) has throughout been having 1/3rd share in the said property. The suit property was never partitioned between the plaintiff and defendants No.1 and 2. As such, the suit property never lost its character as HUF Property since its acquisition in July 1993.

Though, the plaintiff had been residing with her husband since her marriage, but she has been regularly visiting and staying in the said property. The areas of the said property have always been designated for the use of the plaintiff as member and coparcener of R.S.Mittal (HUF). The defendants and plaintiff, have throughout been in joint possession of the said property, being co-owners and the plaintiff, being co-owner, is in deemed possession of the same, in any case.



Further also, it was averred in the plaint that defendants No.1 and 2, acted in connivance with each other and defendant No.1 transferred the entire property, in the sole name of defendant No.2 and while doing so, defendant No.1 misrepresented himself to be the sole and absolute owner of the suit property. Due to certain communications, through letter and E-mails, it came to the notice of the plaintiff that some transfer deed was executed in favour of defendant No.2, despite the fact that defendant No.1, only has 1/3rd undivided share in the property. As such, the plaintiff had asserted her right to the extent of 1/3rd share in the said property and challenged the transfer deed dated 09.04.2019.

In fact, it was also averred that the record reflects about defendants having previously admitted that the said property was properly registered in the name of R.S.Mittal (HUF) in 1993 and was owned by R.S.Mittal, HUF and the plaintiff is the member of the same.

Besides the aforesaid, the plaintiff also asserted that the property can fetch rental income of at least Rs.1.5 lakh and thus, sought proportionate amount towards damages/mesne profits

The defendants made appearance. Defendant No.1 filed an application under Order VII Rule 11 CPC, on the ground of the plaint being i) not maintainable; ii) non affixing of Court fees; and iii) barred by law.

It is categoric claim put forth in the application that the property in itself had never remained HUF and as per pleadings of the plaintiff, it does not create an HUF. There was no nucleus as there was no joint family or ancestral property, ever inherited, even as per the case of the plaintiff. Even the suit is not maintainable, as the plaint is completely bereft of any details or material facts, as to how the property in question, can be said to be HUF



property. It was also asserted that defendant No.2 is absolute owner in possession of the suit property. As the plaintiff has challenged the transfer deed dated 09.04.2019, therefore, the plaintiff is liable to pay ad valorem Court fee, on the market value of the suit property, which is having value of more than Rs.10 crore and she has not affixed the Court fee. Even, she had sought damages @ Rs.50,000/- per month, but however, she has not affixed the Court fee, on the amount of damages.

Reply to the said application was filed. After having heard counsel for the parties, the application under Order VII Rule 11 CPC was dismissed vide impugned order.

Thereupon, revision petition was filed.

Counsel for the parties heard.

The power to reject a plaint, at the threshold, under Order VII Rule 11 CPC, is a serious jurisdiction to be exercised with due circumspection. While genuine causes must not be shut out prematurely, the Courts are equally bound to prevent misuse of judicial process, where the pleadings, on their own showing, disclose no enforceable right or reveal a claim barred by law. Thus, this provision, serves as an important filter, balancing access to justice, with the need to prevent frivolous, vexatious, or legally untenable claims from being carried to trial.

It is settled position of law that no material, except the plaint or the documents annexed with the plaint, could be considered, at the stage of consideration of an application under Order VII Rule 11 CPC. The test for exercising the power under Order VII Rule 11 is, as to whether the averments made in the plaint together with the documents relied upon, taken in entirety, disclose cause of action to put the case on trial. Whether such



disclose is being made, is essentially a question of fact.

While considering such kind of application, it is obligatory to read the entire plaint, as a whole, to find out, as to whether, it discloses cause of action or not and the plaint cannot be rejected, on selective reading of the plaint. Whether the plaint discloses the cause of action, is question of fact, which has to be gathered, on the basis of the averments in the plaint in its entirety, while taking these averments to be correct. For this purpose, there cannot be any addition or subtraction of the words. No amount of evidence, can also be looked into. The issue on merits of the matter, would not be within the realm of the Court, at that stage.

So far as, the application for rejection of the plaint having filed, on the count of non-payment of *ad valorem* Court fee, with regard to the right asserted on the count of 'mesne profits' as well as challenging the 'transfer deed', the same as such, has not been pressed for, by counsel for the petitioners. Otherwise also, suffice to consider that respondent No.1-plaintiff, as such, has not claimed any arrears, for the period, prior to the institution of the suit and therefore, no *ad valorem* Court fee, is payable on the amount of mesne profits, claimed for the use and occupation of the premises, during the pendency of the suit.

So far as, the transfer deed is concerned, respondent No.1-plaintiff is not signatory to the same and she has sought declaration only, to contest her right, while claiming herself to be in joint possession and therefore, not seeking possession. In the light of the sole declaration being sought, in this manner, when plaintiff is not signatory to the transfer deed, therefore, no *ad valorem* Court fee is payable.

Throughout, counsel for the petitioners-defendants laid much



emphasis upon the plaint having given amiss of the basic details, regarding creation or existence or nucleus of HUF of joint Hindu Family. In this context, the plaint is asserted to be vague.

So far as, the nature of the suit property is concerned, it is pertinent to note that respondent No.1-plaintiff has categorically claimed about the property to be purchased by defendant No.1. Suffice to consider the contents of the plaint, copy whereof is Annexure P-3. Therein, the plaintiff had categorically stated about the suit property to have been purchased by defendant No.1 to be Hindu Undivided Family, namely, R.S.Mittal (HUF), consisting of R.S.Mittal, Karta, defendant No.2-Sudhir Mittal and Nirupama Kishore-plaintiff, as its members.

Along with the plaint, various documents were filed, which also as such, can be considered for the purposes of disposal of the said application. The same have also come on record. Perusal of the allotment letter from the Estate Officer to R.S.Mittal, which was annexed with the plaint, reveals about R.S.Mittal, to be Karta of R.S.Mittal (HUF). The conditions of re-allotment (Annexure P-2) also refers to the re-allottee, in the same manner. Not only this, a letter, vis-a-vis, approval of fresh/revised building plans, is also addressed by the Estate Officer to R.S.Mittal (HUF).

Besides the same, even the copy of the Will of R.S.Mittal, as such, has come on record, where, there is mention made of R.S.Mittal, to be Karta of his Hindu Undivided Family, known as R.S.Mittal (HUF). Suffice to consider, at this stage, about the suit property having been mentioned therein as HUF property.

During the course of arguments, it was submitted by counsel for the petitioners that the words 'R.S.Mittal Karta or HUF' were mentioned

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only for taxation purposes, whereas, the property is self-acquired property, purchased from the funds generated by R.S.Mittal and he never treated the property in question as HUF property.

However, considering the documents having annexed with the plaint, mentioning about the status of the property, as that of 'HUF', the matter, as such, raises mixed question of fact and law, vis-a-vis, the nature of the suit property being 'HUF' or not, which necessarily requires evidence.

At this stage of the case, solely on account of mention being made of 'HUF', in the documents relating to the suit property and also about the Will containing recitals of existence of 'HUF', the plaint of respondent No.1-plaintiff cannot be rejected, at the threshold. The issue raised, as such, is manifestly triable and require adjudication on evidence.

In the light of the aforesaid observations, learned trial Court has appropriately appraised the material brought on record and correctly dismissed the application under Order VII Rule 11 CPC.

The impugned order calls for no interference. Hence, the revision petition sans merit and is hereby dismissed.

May 21, 2026
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No