



CR-5523-2025

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

125

CR-5523-2025**Date of Decision:19.08.2025**

Surender Kamra

... Petitioner

Versus

Anjali Kumari Kamra and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Rakesh Bhatia, Advocate
for the petitioner.

AMARINDER SINGH GREWAL, J. (ORAL)

1. The present revision petition has been filed by the petitioner under Article 227 of the Constitution of India for setting aside the impugned order dated 31.07.2025 (Annexure P-7) passed by the learned Civil Judge (Junior Division), Karnal whereby the application filed by respondent No.1 for rejection of plaint presented by the petitioner has been allowed.

2. In brief, the facts are that the marriage between the petitioner-plaintiff and respondent No.1/defendant No.1 was ordered to be dissolved vide decree of divorce/judgment dated 19.07.2018 passed by the learned Family Court, Karnal. During the marital relationship, the petitioner-plaintiff purchased a flat/residential property bearing No.J-102 in the name of respondent No.1 from respondent No.2 and the price of the said flat was fixed as Rs.23,59,500/-, out of which the petitioner-plaintiff has made payment to respondent No.2 on behalf of respondent No.1 from time to time through various modes. He filed a suit for declaration with consequential relief of permanent injunction whereby he sought transfer of the said house in his name and also pleaded that he gifted gold jewellery of about 120-130 grams to respondent No.1 at the time of marriage and 240-250 grams of gold jewellery on various occasions during marital relationship. It is further pleaded therein that



CR-5523-2025

-2-

respondent No.1/defendant No. 1 was given half share in the FDRs amounting to Rs.6,00,000/- in Allahabad Bank, Hansi, District Hisar, in which Smt. Krishna Devi was joint holder to the extent of another half share. In the said suit, respondent No.1/defendant No.1 filed an application under Order 7 Rule 11 CPC seeking rejection of plaint on the ground that since the petitioner-plaintiff wants to get back possession of the suit property and is also claiming specific amount of FDR i.e. Rs.6,00,000/- and the gold jewellery, he is liable to pay *ad valorem* court fees as per rules, which he is evading. The said application has been allowed by the learned trial Court vide impugned order dated 31.07.2025, directing the petitioner-plaintiff to assess the valuation as well as payment of court fees on the sale consideration of agreement dated 16.07.2012 and on the specific amount of FDR i.e. Rs.3 lakhs, being half share of Rs.6 lakhs and thereupon pay the *ad valorem* court fee on the said valuation till the next date of hearing, failing which the order of rejection of plaint shall be made absolute. Hence, the revision petition.

3. Learned counsel for the petitioner submits that the learned trial Court has erred in allowing the application under Order 7 Rule 11 CPC, while completely ignoring the fact that respondent No.1-defendant No.1 has already filed the written statement and the aforesaid application has been filed after expiry of three years. In support of his contention, he relies upon the judgment of the Hon'ble Supreme Court passed in Civil Appeal No.4570 of 2023 titled as *M/s Bhagya Estate Ventures Pvt. Ltd. Vs. Narne Estates Pvt. Ltd. and another* on 11.09.2024 where the application filed under Order 7 Rule 11 CPC seeking rejection of plaint under Clauses (a) and (d) thereof, after about 10 years of the institution of the suit was dismissed. It is further contended that deficiency of court fee is a mixed question of fact and law and, therefore, the learned trial Court ought to have framed the issue in this regard, instead of directing the petitioner to assess the correct valuation of the suit and after assessing



said valuation, to pay *ad valorem* court fee on such valuation. If at the final stage, the issue is decided against the petitioner, he can be asked to make good the deficiency of court fee.

4. Heard.

5. The head note and prayer sought in the suit is reproduced as under:-

Head note:

“Suit for declaration with consequential relief of permanent injunction and mandatory injunction.”

Prayer:

“It is therefore prayed that a decree for declaration to the effect that the plaintiff is the exclusive actual and legal owner of Flat No.J-102, Ras Residency, Karnal, District Karnal and further passing a decree for mandatory injunction issuing a direction to the defendant No.2 to incorporate, change/insert name of the plaintiff in place of defendant No.1 and 3 in the entire relevant allotment record of the said plot and further directing the defendant No.1 to return the entire gold jewellery as mentioned in para No.6 of the plaint above and further to return the aforesaid amount of FDR duly mentioned in para No.7 of the plaint alongwith interest @18% from the date of accrued till its realization may kindly be passed in favour of the plaintiff and against the defendants in the interest of justice with costs of the suit keeping in view the aforesaid facts and circumstances.”

6. It is also apt to reproduce para Nos.5 & 11 of the plaint, which are as under:-

“5. That the plaintiff has paid near about 70% of the sale consideration of the above mentioned flat to the defendant No.2 on behalf of defendant No.1, but as the agreement to sell as well as the other documents were executed in the name of the defendant No.1 and as such, the said property is lying recorded in the name of defendant No.1.

xxxx

xxxx

xxxx



11. That the Hon'ble court vide order dated 20.09.2023 has ordered to implead Smt. Poonam Rani wife of Shri Madan Lal as defendant No.3, as the defendant No.1 has sold the property in question in favour of defendant No.3 wrongly and illegally."

7. A perusal of head note and prayer clause of the plaint reveals that the petitioner-plaintiff has filed a simplicitor suit for declaration with consequential relief of permanent injunction and mandatory injunction. However, a conjoint reading of paras No.5 and 6 of the plaint, as reproduced above, reveals that the suit property of which the petitioner seeks to get back the possession, has been sold by respondent No.1-defendant No.1 to defendant No.3 and when the third party rights have already been created and the subsequent purchaser has already been impleaded as defendant No.3, the petitioner-plaintiff is indirectly challenging the said sale deed, though no prayer is made for cancellation of sale deed or declaring the same as null and void. Since the petitioner-plaintiff is the non-executant of the sale deed and is not in possession and he is seeking not only a declaration that the sale deed is invalid but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7 (iv) (c) of the Court Fees Act, 1970. (see ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others (2010) 12 SCC 112***). Furthermore, the petitioner-plaintiff is also claiming specific amount i.e. half of Rs.6 lakhs as lying deposited in the FDR i.e. Rs.3 lakhs. The argument of learned counsel for the petitioner that the respondent No.1/defendant No.1 has opted to file written statement first and thereafter, moved the application under Order 7 Rule 11 CPC seeking rejection of plaint also falls flat, as the application under Order 7 Rule 11 CPC can be filed at any stage of the suit before conclusion of the trial. In ***M/s Bhagya Estate Ventures Pvt. Ltd.*** (supra), the application under Order 7 Rule 11 CPC was filed at the stage when both the parties had led their evidence and the suit was ripe for hearing the

**CR-5523-2025**

-5-

final arguments and in that eventuality, the application was dismissed. In the case in hand, only written statement has been filed and issues are yet to be framed, meaning thereby, trial is yet to commence.

8. In view of the above, the impugned order dated 31.07.2025 passed by the learned trial Court does not require any interference and the same is upheld. Consequently, the instant petition stands dismissed.

(AMARINDER SINGH GREWAL)
JUDGE

August 19, 2025

Pankaj*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No