

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****129****CR-3553-2025(O&M)****Date of decision: 25.09.2025****Hakam Singh @ Hukam Singh****...Petitioner(s)****Vs.****Jang Singh & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Parminder Singh, Advocate
for the petitioner.***********NIDHI GUPTA, J.**

Present Civil Revision Petition has been filed by the defendant under Article 227 of the Constitution of India, for setting aside the order dated 26.05.2025 (Annexure P9) passed by the trial court, whereby application filed by the petitioner under Order 7 Rule 11 CPC either for rejection of plaint and for framing the necessary issues, has being dismissed.

2. Learned counsel for the petitioner at the very outset submits that the present Revision Petition is being pressed only qua the issue of framing of additional issue; and no prayer is being made for rejection of the plaint on ground of non-deposit of Court fee. It is submitted that as per the pleaded facts in the plaint and denied by the other in the written statement,



it was incumbent upon the learned trial Court to at least frame an issue in respect of the Court fee payable by the respondent/plaintiff. By way of impugned order both the prayers have been rejected, and the impugned order therefore suffers from patent illegalities and jurisdictional error in the eyes of law.

3. It is further submitted that as also stated in the Revision Petition, vide impugned order dated 26.5.2025, the Learned Trial Court has wrongly dismissed the application on the ground that *“as per averment of the plaint there would no amount to nagitation of concept of co-share. The Learned Trial Court further fell in error while rejecting the another prayer for framing the distinct issue as per concept of the order 14 of CPC. The Learned trial court has wrongly returned the finding that the issue of payment of ad valorem court fee is covered with the already framed issue “Whether the present suit is not maintainable in the present form? - OPD” The above said issue framed by the Trial Court is not fall under the requirement to frame issue as per the material proposition, affirmed by the party and denied by the other. The Learned Trial Court has overlooked the concept of framing the issue and the principle of law laid down on this subject. The requirement of law is to frame issue not on the basis of the prayer made in the suit, but the separate issues required to be made on each material proposition affirmed by one party and denied by the other.”*

4. No other argument is made on behalf of the petitioner.



5. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the petitioner.

6. Perusal of record shows that the respondent had filed a suit dated 'Nil' (Annexure P1) for possession by way of partition; and mandatory injunction directing the petitioner/defendant to remove illegal construction of specific khasra numbers. It was the pleaded case of the plaintiff that the parties to the suit are joint owners as per their share in the suit land measuring 84 kanal 19 marla as the suit land has not been legally partitioned between the co-sharers. The petitioner had filed written statement dated 'Nil' (Annexure P2) to the said suit. Subsequently, the petitioner had filed application dated 02.05.2017 (Annexure P3) under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint; to which reply dated 24.07.2017 (Annexure P4) was filed. The said application was dismissed as withdrawn by the petitioner on 02.11.2017. Thereafter, the petitioner had filed another/present application dated 'Nil' (Annexure P7); to which reply dated 'Nil' (Annexure P8) was filed by the respondents. Vide the impugned order dated 26.05.2025, the said application (Annexure P7) of the petitioner, has been dismissed.

7. I find no error in the impugned order as, it can not be lost sight of that the present is the second application moved by the petitioner under the provision of Order 7 Rule 11 CPC on the same ground; whilst admittedly the previous application (Annexure P3) was dismissed as withdrawn on



02.11.2017. First and foremost, second application is not maintainable. Secondly, application (Annexure P7) has been filed under *“under Order 7 Rule 11 read with section 151 of CPC for rejection of plaint and for framing necessary issue in this regard”*. Needless to say, the said provision of Order 7 Rule 11 CPC only deals with rejection of plaint on various grounds; and is not a provision under which issues can be framed. As already noted above, the petitioner has withdrawn his prayer for rejection of plaint and has limited his prayer for framing of additional issue. Thus, too, prayer of the petitioner cannot be granted.

8. Even otherwise, a contradictory plea has been raised by the petitioner inasmuch as on the one hand the petitioner is seeking rejection of the plaint on ground of non-deposit or non-affixation of requisite Court fee; on the other hand, the plaintiff is seeking framing of specific issue regarding non-affixation of Court fee. The same is beyond the scope of provision of Order 7 Rule 11 CPC. Even otherwise, there are a plethora of judgments as per which it is laid down that the question of court fee is between the State and the plaintiffs, and the defendant cannot be permitted to stall the proceedings by raising objection regarding inadequacy of court fee.

9. Relevant reasoning of the learned trial Court is in Para 12 of the impugned order dated 26.05.2025, which reads as follows:-

“12. Furthermore, the applicant by filing the present application has alleged that the court has not framed a specific issue regarding non-affixation of court fee. It is made clear that Rule 11 under Order 7 of Code of Civil Procedure delineates “certain”



*grounds under which the Court shall reject a plaint. It is only in pursuant to the grounds mentioned in the above said provision that the plaint is liable to be rejected. Non-framing of a specific issue does not fall under the purview of Rule 11 of Order 7 of Code of Civil Procedure. Also, the predecessor court vide order dated 10.04.2018 has formulated the moot points, wherein a specific issue no. 2, "**whether the present suit is not maintainable in the present form? - OPD**" has been culled out. The court while adjudicating upon this issue ascertain and rule upon any institutional defect. When the court adjudicate upon the issue of maintainability of the suit, while finally deciding the suit at the stage of final argument, the power of the court is wider and broader than Order 7 rule 11 of Code of Civil Procedure and it is permissible and open to the court to look into and examine the material produced by both the sides. Thus, even if for the sake the argument, the latter contention of the applicant pertaining to non-framing of issue is considered, then foremost, such a contention is not tenable to be considered while adjudicating the present application. Second of all, the Ld. predecessor court has rightly formulated the issue regarding the maintainability of the present suit, which would accommodate the contention raised by the applicant."*

10. I am in complete agreement with the above view taken by the learned trial court. As such, no ground is made out to interfere in the impugned order. Present petition accordingly stands **dismissed**.

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

25.09.2025
Sunena

(Nidhi Gupta)
Judge

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