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

CR-4606-2025 (O&M)

Date of Decision : 21.07.2025

Kamlesh Bansal & Anr ... Petitioner(s)

Versus

Hukum Chand Garg & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhinav Singla, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the impugned order dated 07.04.2025 (Annexure P-7) whereby the application filed by the defendant-petitioners herein under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 and 2 herein filed a suit for declaration to the effect that they had half share out of land measuring 127 kanals 7-2/2 marlas as fully described in the plaint as also for declaration that the sale deed dated 09.12.2016 qua the land measuring 32 kanals out of 80 kanals 4 marlas was illegal, result of fraud and the plaintiff-respondent Nos.1 and 2 had half share in the said land as also for permanent injunction. It has been averred in the plaint that Hukam Chand Garg (plaintiff-respondent No.1 herein) and Subhash Kumar Bansal (defendant-petitioner No.2 herein) were very close and they were jointly purchasing the property in their favour or in the name of their wives or their close relatives. The plaintiff-respondent No.1 and the

defendant-petitioner No.2 herein agreed to purchase land measuring 127 kanals 7-2/3 marlas situated in Village Jhill out of 131 kanals 7-2/3 marlas from Joginder Singh son of Waryam Singh, Ajit Singh son of S. Joginder Singh, Khushinder Kaur, Subhinder Kaur daughters of S. Joginder Singh. An agreement to sell dated 28.12.1992 was got executed in favour of Subhash Kumar Bansal (defendant-petitioner No.2 herein). The plaintiff-respondent No.1 attested the agreement to sell being a marginal witness. It has further been averred in the plaint that it was settled between the plaintiff-respondent No.1 and the defendant-petitioner No.2 herein that the sale deed would be got registered in the name of both in equal shares. Joginder Singh and others backed out from the agreement to sell dated 28.12.1992 and litigation commenced in the shape of a suit for specific performance. In the said suit, the plaintiff-respondent No.1 appeared as a witness for the defendant-petitioner No.2 herein. The said suit was partly decreed. Both the parties filed the appeals before the First Appellate Court both of which were dismissed. Thereafter, an execution was preferred by the defendant-petitioner No.2 and the sale deed was executed in his favour. It has further been averred in the plaint that a fraud had been played upon the plaintiff-respondent No.1 as the sale deed was to be executed in both the names. It has further been averred in the plaint that half share of the earnest money, expenses and the balance sale consideration had already been paid to the defendant-petitioner No.2 herein. Written statement was filed. On the basis of the pleadings, issue Nos.3 and 4 regarding cause of action have already been framed by the Trial Court. After the framing of the issues, an application was filed under Order 7 Rule 11 of CPC by the defendant-

petitioners herein on the ground that the plaint did not disclose any cause of action and that the suit had been filed on false and baseless grounds. Reply was filed to the said application and vide the impugned order the application was dismissed. Hence, the present revision petition by the defendant-petitioners.

3. Learned counsel for the defendant-petitioners would contend that in the previous suit which was filed for specific performance of the agreement to sell dated 28.12.1992, the plaintiff-respondent No.1 had appeared as a marginal witness and, therefore, the present suit wherein he had alleged that the sale deed was also to be executed in his name qua half share is patently wrong and, hence, no cause of action is made out in his favour. In the application under Order 7 Rule 11 of CPC, reliance has been placed upon the deposition of the plaintiff-respondent No.1 in the civil suit filed qua the specific performance of the agreement to sell dated 28.12.1992. The entire reference is to the earlier suit as also to some proceedings under Section 145 of the Code of Criminal Procedure, 1973. It has further been stated in the application that the present plaintiff-respondent No.1 had nowhere claimed that he had paid the sale consideration or contributed to part of the consideration and that there was no partnership between the plaintiff-respondent No.1 and the defendant-petitioner No.2.

4. I have heard the learned counsel for the defendant-petitioners as well as perused the paper book.

5. In the present case the entire application filed under Order 7 Rule 11 of CPC is based on the pleadings and the findings returned by the Court in the previous suit which was filed by the defendant-petitioner No.2 qua agreement to sell dated 28.12.1992.

6. It is trite that while deciding an application under Order 7 Rule 11 of CPC, only the contents of the plaint are to be seen. Hon'ble Supreme Court in case of **Salim D. Agboatwala & Ors. vs. Shamalji Oddhavji Thakkar & Ors.** [AIR 2021 SC 5212] has held as under :

“10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”

7. In case of **Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors.** [2018(5) RCR (Civil) 163] the Supreme Court held as under :

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start

running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

8. Further, in the case of **Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi [2019(1) RCR (Civil) 366]**, it has been held as under:

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of

the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

9. A perusal of the plaint filed by the plaintiff-respondent Nos.1 and 2 reveals that neither the pleadings of the earlier suit nor the evidence in the earlier suit form part of the documents appended with the plaint. Further, still, one of the grounds mentioned in the application under Order 7 Rule 11 of CPC is that the plaintiff-respondent No.1 had not stated anywhere that he had paid the sale consideration or contributed to the part of the sale consideration. The said fact is belied from the plaint itself wherein in para 17 of the plaint it has been stated that the plaintiff-respondent Nos.1 and 2 had already paid half share to the defendant-petitioner No.2 i.e. earnest money, expenses and the balance sale consideration. Therefore, all these issues which have been raised cannot be gone into while deciding an application under Order 7 Rule 11 CPC. The issues have already been framed and the same would be decided by the Trial Court on the basis of the evidence led.

10. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly

dismissed. Pending applications, if any, also stand disposed off.

11. Nothing mentioned in this order shall be construed to have any bearing on the merits of the suit.

21.07.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO