

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****132****Date of decision: 11.02.2025****CR-812-2025 (O&M)****Nishan Singh & Another****...Petitioner(s)****Vs.****Gulwinder Singh Sandhu & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sharad Mehra, Advocate  
for the petitioners.

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**NIDHI GUPTA, J.**

Present petition under Article 227 of the Constitution of India is filed seeking quashing or setting aside of order dated 04.10.2024 (Annexure P1) passed by the learned Civil Judge (Junior Division), Tarn Taran vide which the application under Order VII Rule 11 CPC filed by the petitioners, was dismissed.

2. Brief facts of the case are that respondents No.2, 4, & 5 herein had filed a Civil Suit No.538/2018 titled as "Nishan Singh & Others Vs. Gulwinder Singh" (Annexure P2), against the respondent No.1; seeking declaration to the effect that they are owners in possession qua their share in the suit land as described in the plaint; and that their names figured in the latest Jamabandi for the year 2013-14 as co-sharers in cultivating possession of the property. Vide order dated 05.01.2019, the Id.trial Court directed the parties to maintain status quo regarding the suit property.



3. It is the case of the petitioner that on 03.05.2019, respondent No.1/defendant in the above suit instituted an application under Order 39 Rule 2A CPC (Annexure P4) alleging therein that the plaintiffs/respondents No.2 and 3 tried to hand over the possession of the suit property to the present petitioners on 16.04.2019. Respondent No.1 allegedly made a request to respondents No.2 and 4 for not disturbing the status quo order dated 05.01.2019 to which they allegedly did not adhere and created a path on the suit property by putting soil on it with the help of JCB (owned by respondent No.6) and two tractor-trolleys being driven by respondents No.7 and 8. As such, the respondent No.1 filed contempt proceedings against respondents No.2 to 8, and the present petitioners. A DDR dated 01.11.2019 was also registered in Police Station Chohla Sahib qua this incident. The petitioners filed reply (Annexure P5) objecting to the contempt application on ground of maintainability etc. It was further pleaded by the petitioners that the plaintiffs/respondents No.2 and 4 had filed a suit only against respondent No.1 and the petitioners were not a party to the said suit. As such, contempt application by respondent No.1 was not maintainable qua the present petitioners. It was further claimed by the petitioners that the father of petitioner No.2 namely Gopal Singh was owner in possession of the suit land and after his death, petitioner No.2 came into possession of the property being its owner on the basis of inheritance and that the petitioners never tried to violate the order passed by the trial Court. As such, the petitioners moved the present



application under Order 7 Rule 11 CPC dated 15.07.2024 (Annexure P6) stating therein that as the suit was only between respondents No.1, 2 and 4 and the petitioners are not a party to it therefore, respondent No.1 is not entitled to file contempt application against the petitioners and the same is not maintainable under law. However, vide the impugned order dated 04.10.2024 (Annexure P1), the said application of the petitioners has been dismissed.

4. Learned counsel submits that the impugned order is unsustainable as the learned trial Court has failed to appreciate the above facts. It is submitted that the suit was filed by respondents No.2 and 4 & 5 against respondent No.1/defendant and petitioners are not a party to the suit. Nor the same was brought to the knowledge of the petitioners. Therefore, the contempt application cannot proceed against the petitioners under law. It is submitted that the learned trial Court did not take into consideration the fact that the court can proceed against a person who is not a party to the injunction order only where it is apparent that the person who violated the order of injunction was an agent or servant or workman of the defendant. In the present case, the petitioner is not related to respondent No.2 and 4 & 5 in any manner and has been dragged into this litigation unnecessarily. It is accordingly prayed that the impugned order be set aside.

5. Heard.

6. I find no error in the impugned order.



7. It is an established position in law that at the stage of deciding an application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen. The Hon'ble Supreme Court in numerous judgments including "**Eldeco Housing and Industries Ltd. Vs. Ashok Vidyarthi & Others**" Law Finder Doc ID # 2406865, has repeatedly held that no evidence or merits of the controversy can be examined at the stage of deciding rejection of a plaint in an application under Order 7 Rule 11 CPC; and that only the averments made in the plaint would be relevant for invoking Order 7 Rule 11 CPC. In "**Kamala & Others Vs. K.T. Eshwara Sa & Others**" 2008 (12) SCC 661, it is held that in an application under Order 7 Rule 11 CPC, no evidence can be looked into; issue on merits of the matter would not be within the realm of the Court at that stage; and the Court would not decide any evidence or disputed question of fact or law. In the present case, whether or not the application of the respondent no.1 under Order 39 Rule 2A CPC was maintainable against the petitioner is a matter of evidence. As such, the application of the petitioner has been rightly dismissed.

8. **Dismissed.**

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

**11.02.2025**

Sunena

**(Nidhi Gupta)  
Judge**

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