

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****121****RSA-2741-2022 (O&M)****Date of decision: 28.07.2025****Master Pulkit (minor)****...Appellant(s)****Vs.****Smt. Chandermukhi wd/o late sh. Dayanand****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Yash Dev Kaushik, Advocate for the appellant.

NIDHI GUPTA, J.**CM-9468-C-2022**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 308 days in refiling the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by an affidavit of the counsel, the same is allowed and delay of 308 days in refiling the accompanying appeal is condoned.

RSA-2741-2022 (O&M)

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit of the plaintiff for permanent injunction has been rejected on an application filed by the defendant No.1/respondent No.1, under Order VII & Rule 11 read with Section 151 CPC.



2. Learned counsel for the plaintiff/petitioner *inter alia* submits that the plaintiff is the son of respondent No.2/defendant No.2, and grandson of respondent No.1/defendant No.1. The present suit was filed by the plaintiff seeking a decree of permanent injunction in respect of the suit property with the averments that defendant No.1 is the owner in possession of the suit property. It was further averred that the plaintiff along with defendants No.1 and 2 all constitute Joint Hindu Family. By being a member of the Joint Hindu Family, plaintiff became co-parcener/co-sharer in the Joint Hindu Family properties by birth. As per Hindu Succession Act, plaintiff has a legal right in the property. Defendants wanted to keep the plaintiff and his mother away and wanted to alienate the suit property depriving the plaintiff of his right. Accordingly, instant suit for permanent injunction was filed by the plaintiff on dated 03.03.2018.

3. Upon notice, defendants had appeared and filed application dated 02.05.2018 under Order 7 Rule 11 read with Section 151 CPC. Rejection of the plaint was sought *inter alia* on the ground that suit property is self acquired property of defendant No.1 and is not co-parcenary property. As such, minor plaintiff has no right to claim the same. It was further averred that co-parcener has no right to restrain alienation, but he can challenge the alienation after the same has been affected.

4. Vide judgment and decree dated 07.08.2018, the learned Civil Judge (Junior Division), Faridabad had allowed the application of



defendant No.1 and rejected the suit of the plaintiff on the ground that no injunction can be granted against *karta*; and only course open to the petitioner is to challenge the alienation of residential house/Joint Hindu property on the ground of bad management. Appeal filed by the plaintiff was dismissed by the learned Lower Appellate Court vide judgment and decree dated 03.09.2019. Hence, the present Second Appeal by the appellant.

5. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

3. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant.

6. Admittedly, it is the own case of the plaintiff that his father/defendant No.2 is *karta* of the family. Admittedly, no injunction can be granted against *karta*; and the only recourse available to the plaintiff is to challenge the alienation if and when it is so affected. In holding as above, Id. Courts below have relied upon extensive case law; and this established legal position has not been disputed by learned counsel for the appellant.

7. It is also to be seen that suit was not maintainable as per Section 41 (h) of the Specific Relief Act as it has been stated in the plaint that the suit property is co-parcenary property which cannot be alienated without legal necessity and consideration. Assuming the averments of the



plaintiff to be correct, the plaint was rightly rejected by learned Courts below for lack of cause of action and not maintainable, as it is admitted position in law that no injunction can be granted against *karta*. Relevant reasoning of the learned Additional District Judge, Faridabad is contained in para 10 of the impugned judgment and decree dated 03.09.2019 which is reproduced here-in-below: -

*“10. I have also perused the impugned order passed by the trial court and contents of plaint, it transpires that while consideration of the application under Order VII Rule 11 CPC, the trial court has considered the averments mentioned in the plaint and the ratio of law laid down in **Lt. Col. Hargovind Singh (Retd.)'s case (supra)**, **Rajiv Dhulla's case (supra)**, **Chhatar Pal Singh's case (supra)** and **M/s New India Construction Company's case (supra)**, are of no help. The case law would help the appellant, if it appears to the court that the trial court while adjudicating the application under Order VII Rule 11 CPC, considered the contents of the written statement. However, in this case, no written statement was filed by the respondents. The trial court has considered the averments of the plaint only and came to the conclusion that the plaint is not maintainable. The impugned order does not disclose that the trial court has considered some other material for disposal of the application. Hence, there is no legal infirmity in the impugned order, which warrants interference of this court. Therefore, the appeal is dismissed being devoid of merit. However, no orders as to costs. Decree sheet be prepared accordingly.”*



8. I find no error in the same. The present Regular Second Appeal is hereby **dismissed**.

9. Pending applications, if any, stand disposed of.

28.07.2025

Divyanshi

(NIDHI GUPTA)

JUDGE

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