



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

\*\*\*

CR-5469-2022

Date of decision : 11.09.2025

Virender Singh and another

... Petitioners

Versus

Jeet Ram and others

... Respondents

***CORAM: HON'BLE MR. JUSTICE VIKAS BAHL***

Present: Mr.Amandeep Vashisth, Advocate  
for the petitioners.

Mr.Sandeep Sharma, Advocate and  
Mr.Rohan Moudgil, Advocate  
for respondents no.1 ,2 and 4.

**VIKAS BAHL, J.(ORAL)**

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India read with Section 151 CPC against the order dated 31.08.2022 (Annexure P-10) passed by the Civil Judge (Jr.Div.), Gurugram in civil suit no.CS-6348-2018 dated 17.12.2018 (Annexure P-1), vide which the application dated 03.01.2019 (Annexure P-4) under Order 7 Rule 11 CPC for rejection of plaint, filed by the predecessor of the petitioners, has been rejected.

**ARGUMENTS ON BEHALF OF THE PETITIONRS**

2. Learned counsel for the petitioners has submitted that



respondents no.1 to 4 had filed a suit for declaration, permanent injunction and mandatory injunction against 13 defendants including defendant no.3-Dharampal, who is the predecessor-in-interest of the present petitioners. It is argued that in the said suit, challenge has been made to the partition proceedings which have culminated vide partition order dated 16.10.2007 and that the challenge to the said partition proceedings is barred under Section 158 (2) (xvii) of the Punjab Land Revenue Act, 1887 as applicable to the State of Haryana, now called The Haryana Land Revenue Act 1887 (hereinafter referred to as “1887 Act”). It is submitted that as per the said provision, any claim for partition of an estate, holding or tenancy or any question connected thereto is to be raised in the said proceedings and Civil Court shall not exercise jurisdiction over the said matter. Section 158(2)(xvii) which has been highlighted by learned counsel for the petitioners, is reproduced hereinbelow:-

*“158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers:- Except as otherwise provided by this Act-*

xxx xxx xxx

*(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely:*

xxx xxx xxx

*xvii)any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought;”*



3. It is submitted that since in the present plaint, the challenge has been made to the partition proceedings which is covered under the abovesaid provision, thus, the civil suit is barred and in view of the same, the present petitioners along with the written statement had moved an application under Order 7 Rule 11 CPC for rejection of the plaint. It is argued that the learned trial Court vide order dated 31.08.2022 had dismissed the said application on surmises and conjectures and the said order dated 31.08.2022 is not in accordance with law and deserves to be set aside and the application filed by the petitioner under Order 7 Rule 11 CPC deserves to be allowed and the plaint deserves to be rejected on the said ground alone.

**ARGUMENTS ON BEHALF OF RESPONDENTS NO.1, 2 AND 4**

4. Learned counsel for respondents no.1, 2 and 4, on the other hand, has submitted that there are as many as 13 defendants out of which only one defendant i.e., defendant no.3 had filed an application under Order 7 Rule 11 CPC. It is submitted that it is a matter of settled law that in case the suit is to proceed against any of the defendants, then it cannot be rejected. It is further submitted that the issue which has been raised in the present plaint, moreso, in paragraph 7 would show that question of title is involved in the said proceedings and it is only the Civil Court which can decide the said question and it is not for the revenue Court to decide the same. It is submitted that there was an apparent mistake in the jamabandis which was prepared subsequent to the jamabandi for the year 1955-56 and



the consolidation proceedings and a declaration regarding the said mistake can only be made and granted by the Civil Court and for the said purpose, reference has been made to Section 45 of the 1887 Act. It is submitted that in the suit, apart from seeking declaration with respect to partition proceedings, other reliefs including relief of compensation and permanent injunction have also been sought, which can only be granted by the Civil Court. It is submitted that it is a matter of settled law that in case even one relief can be granted by the Civil Court, then, the plaint cannot be rejected. It is further submitted that for the purpose of the deciding the application under Order 7 Rule 11 CPC, only the averments made in the plaint can be taken into consideration and the defence of the defendant is not to be taken into consideration. It is further submitted that defendant no.3 has already filed his written statement and thus, all the issues can be comprehensively decided at the time of final adjudication.

### **ANALYSIS AND FINDINGS**

5. This Court has heard learned counsel for the parties and has perused the paper book and finds that the impugned order dated 31.08.2022 vide which the application filed by the petitioners / successors in interest of defendant no.3 under Order 7 Rule 11 CPC has been rejected, is in accordance with law and deserves to be upheld and the present petition deserves to be dismissed for the reasons stated hereinafter.

6. It is a matter of settled law that at the time of deciding the application under Order 7 Rule 11 CPC, only the averments made in the



plaint and the documents attached with the plaint can be considered and the defence and the documents sought to be relied upon by the defendants are not to be taken into consideration. Reference in this regard can be made to the judgment dated 30.11.2023 of the Hon'ble Supreme Court in the case of ***Eldeco Housing and Industries Limited vs. Ashok Vidyarthi and others, Special Leave Petition (C) no.19465 of 2021.*** The relevant portion of which is reproduced hereinbelow:-

*“26. However, the fact remains that all the aforesaid documents, referred to by the respondent in support of his plea for rejection of the plaint, cannot be considered at this stage as these are not part of the record with the Court filed along with the plaint. This is the stand taken by the respondent-defendant in the application filed under Order VII Rule 11 C.P.C. As noticed above, no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 C.P.C. Hence, in our view, the impugned order of the High Court passed in the Review Application deserves to be set aside. Ordered accordingly.*

*27. The Trial Court shall proceed with the suit. However, if considered appropriate, after pleadings are complete, the issue regarding maintainability of the suit can be treated preliminary.*

*28. The appeal is allowed in the manner indicated above.”*

7. A careful reading of the plaint (Annexure P-1) would show that it was the case of the plaintiffs-respondents no.1 to 4 that area of killa no.6



rectangle no.22 was only 1 kanal 8 marlas and it has been wrongly mentioned as 2 kanals in the jamabandis which were prepared subsequent to the jamabandi for the year 1955-56. Specific averments were made in the plaint to the effect that prior to the consolidation proceedings, killa no.6 of rectangle no.22 was not in existence and that after the consolidation took place, the jamabandi for the year 1955-56 was prepared wherein the land in question was allotted as khewat no.212 and that killa no.6 which was carved out in the consolidation proceedings had an area measuring 1 kanal 8 marlas and to prima-facie prove the said stand, relevant documents were annexed with the plaint which included jamabandi for the year 1955-56. It was further the specific case of respondents no.1 to 4-plaintiffs in the plaint, that the fact that the area of killa no.6 was 1 kanal 8 marlas was further evident from the field book, which field book alongwith its translation was also annexed with the plaint and that it was in the subsequent jamabandis that the area of killa no.6 was wrongly mentioned as 2 kanal instead of 1 kanal 8 marlas. It was stated that since killa no.6/1 allegedly measuring 1 kanal 19 marlas was allotted to Bhim Singh, the predecessor-in-interest of respondents no.1 to 4, serious prejudice was caused to Bhim Singh on account of mistake in the revenue record as the area of killa no.6/1 (1-19) was only a paper allotment and actually no such area was allotted or could have been allotted since total area of killa no.6 was only 1 kanal 8 marlas and thus, apparently there was a shortfall of 11 marla of land to the share of Bhim Singh, who had died and whose estate has been inherited by the



plaintiffs.

8. It was further pleaded that the said mistake in the records of rights was not within the knowledge of the plaintiffs earlier and the plaintiffs came to know about the same only a few weeks prior to filing of the suit when they obtained the relevant revenue records including the jamabandi relating to the consolidation proceedings as well as the field book. The relevant portion of the plaint is reproduced hereinbelow:-

***“6. That the matter in issue involved in the present litigation pertains to land comprising in killa number 6 of rectangle number 22. That in the partition application the area of this killa number was mentioned as 2 kanal. That such mentioning of area was absolutely incorrect as it is a matter of fact that the area of killa number 6 was never 2 kanal rather the same was only 1 kanal 8 Marla. That the plaintiff was not aware of the aforementioned fact that the area of killa number 6 is in fact only 1 kanal 8 Marla. The plaintiff came to know about the aforementioned fact only about few weeks ago when he obtained the relevant revenue records including the Jamabandi relating to the consolidation proceedings as well as the field book.***

***7. That the following submissions are required to be made herein in order to ascertain and confirm the fact that the area of killa number 6 was in fact only 1 kanal 8 Marla and that in the partition proceedings it was wrongfully mentioned as 2 kanal, the said facts are:***

***i. The consolidation proceedings had taken place in the village in question prior to the year 1955-56. As apparent prior to the consolidation proceedings the killa number 6 of***



*rectangle number 22 was not in existence and what existed were khasra numbers: which were unconsolidated.*

*ii. That the consolidation proceedings took place. After the consolidation proceedings the Jamabandi for the year 1955-56 was prepared wherein the land concerned was allotted khewat number 212. The Jamabandi for the 1955 1956 is attached herewith for reference as Annexure-1.*

*iii. As evident from Annexure-1 killa number 6 which was carved out in consolidation proceedings had an area measuring 1 kanal 8 Marla.*

*iv. The fact that the area of killa number 6 was only 1 kanal 8 Marla is further evident from the field book as well. The copy of the field book and Its translation are attached herewith as Annexure-2 Annexure - 3.*

*v. That in the Jamabandis which were prepared subsequently, the area of killa number 6 was wrongfully mentioned as 2 kanal whereas as already discussed hereinabove the correct area of killa number 6 was merely 1 kanal 8 Marla.”*

9. The relevant documents i.e., jamabandi for the year 1955-56, field book etc. which were annexed with the plaint have not been annexed with the present petition. On the basis of the abovesaid averments, the following prayers were made in the plaint:-

*“It is therefore, prayed that:*

*(i). A decree for **declaration** to the effect may be passed that the partition proceedings which culminated to the partition order dated 16.10.2007 are illegal and liable to be set aside. It may be further **declared** that the entire land measuring 106 Kanal 7 Marla i.e. the land in question is joint and deserves to*



*be partitioned in due course after considering the area of killa no. 6 as 1 Kanal 8 Marla instead of 2 kanal.*

*(ii). Alternatively, a decree for declaration may kindly be granted to the effect that on account of shortfall in the area allotted to the plaintiffs, the portion shown in Red in the site plan attached being part of killa no. 15/2/2 is liable to be allotted to the plaintiffs and plaintiffs are liable to be declared owners in possession thereof and if so required, the possession of the red portion be also delivered to the plaintiffs.*

*(iii). Alternatively, if so required, the defendants be directed to compensate the plaintiffs against the shortfall of 11 Marla land as per its market value which is tentatively assessed at Rs. 2,00,00,000/- and accordingly a decree for recovery may kindly be granted in favour of the plaintiffs and against the defendants.*

*(iv). A decree for permanent injunction may also be granted restraining the defendants Bharam Parkash not to raise any construction upon the portion Red shown in the site plan attached herewith.”*

10. A perusal of the above prayers would show that under sub clause (ii), a declaration although alternatively was sought to the effect that on account of shortfall in the area allotted to the plaintiff, the area shown in red in the site plan was liable to be allotted to the plaintiffs and they were liable to be declared owners of the same and also sought delivery of possession, if so required and under sub clause (iii), a prayer was made although alternatively, to compensate the plaintiffs against the shortfall of



11 marlas land as per its market value which was tentatively assessed as Rs.2 crores and a decree for recovery was sought regarding the same. Even a prayer for injunction had been made. A reading of the entire plaint shows that a question of title has been raised by the plaintiffs. It is the case of the plaintiffs that the entries in the subsequent jamabandis were not in consonance with the entries in the jamabandi for the year 1955-56, the consolidation proceedings and the field book. It is a matter of settled law that as per Section 45 of the 1887 Act, in case any person is aggrieved by an entry in the record of rights, then, he is to institute a suit for declaration regarding the same. Section 45 of the 1887 Act is reproduced hereinbelow:-

*“45. Suit for declaratory decree by persons aggrieved by an entry in a record:- If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.”*

11. It is further a matter of settled law that the said declaration can only be granted by the Civil Court and the Revenue Court would have no power to decide the same. A reference in this regard can be made to judgment of the Division Bench of this Court in the case of ***Tarlok Singh vs. Financial Commissioner Co-operation, Punjab & others*** reported as ***2004 SCC OnLine P&H 542***. The relevant portion of which is reproduced hereinbelow:-



*“27. Section 45 of the Act, by the very words used therein, bars the jurisdiction of the revenue officers, including the Financial Commissioner, from directing correction in the Jamabandis. The only remedy available to an aggrieved individual, is to file a suit under Chapter VI of the Specific Relief Act, 1963. The Financial Commissioner was obviously not exercising jurisdiction under the afore-mentioned Act.”*

12. Additionally, it would be relevant to mention that even in case the civil suit qua prayer nos.(i) or (ii) is not allowed and ultimately it is found by the Civil Court that there is a shortfall of 11 marlas which have been given to the plaintiffs on account of wrong entries in the revenue record, it would be very much open to the Civil Court to consider the prayer number (iii), which cannot be granted by the Revenue Court. The question as to whether the plaintiffs ultimately succeed or not, is not to be considered at the stage of deciding the application under Order 7 Rule 11 CPC. It is a matter of settled law that if any of the prayers can be entertained by the Civil Court, then, the plaint cannot be rejected at the threshold.

13. Reliance sought to be placed upon Section 158 (2) (xvii) of the 1887 Act would also not call for summary rejection of the plaint, inasmuch as, the sub clause (xvii) clearly excludes the bar created by Section 158(2) where a question of title is involved. Further Section 158 which is the provision dealing with exclusion of jurisdiction of the Civil Court, specifically provides “**except as provided by this Act**”. Section 45 of the 1887 Act, which is also a provision of the said Act, specifically provides for



filings of a suit for declaration in case, a person is aggrieved by any entry in a record of rights i.e., jamabandi etc. Once a challenge is sought to be made to the record of rights i.e., jamabandis, then, it cannot be said that there is no question of title raised by the plaintiffs. Moreover, nothing has been shown to this Court to show that there is any bar against filing a civil suit, once a wrong entry has been made in the jamabandi and a declaration with respect to the said wrong entries and consequential relief is sought.

14. A Co-ordinate Bench of this Court, *vide judgment dated 19.07.2023* passed in *Civil Revision No.6186 of 2018* titled as "*Joginder Singh Vs. Pritam Singh and others*", wherein challenge was made to the partition proceeding and an objection was raised with respect to it being barred under Section 158(2) (xviii) of the Punjab Land Revenue Act, rejected the said objection and the jurisdiction of the Civil Court was upheld. The relevant portion of the said judgment is reproduced herein below: -

“xxx xxx xxx

*3. The petitioner-defendant in the suit claims that the jurisdiction of the Civil Court is barred under Section 158(2) XVIII of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the '1887 Act'). It is submitted that an order of partition of the property passed by the competent authority is sought to be challenged by filing the civil suit, is not permissible.*

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*7. The test which is required to be applied to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, is required to be construed very narrowly. Once a plaint is rejected, the suit comes to an end. In this situation unless the Court is in a position to record a categoric finding that the suit is not maintainable before the Civil Court, the plaint should not be rejected.....”*

15. Further in the present case, it is not in dispute that there are 13 defendants in the suit. Defendant no.3 is Dharampal and the present petitioners are stated to be the LRs of said defendant no.3-Dharampal. It is only Dharampal, who had filed the application under Order 7 Rule 11 CPC and it is only the successors-in-interest of said Dharampal who have filed the present revision petition for rejection of the plaint.

16. The Hon'ble Supreme Court of India in the case of *Sejal Glass Ltd. vs. Navilan Merchants Pvt. Ltd.* reported as *(2018) 11 SCC 780* had held that a plaint as a whole is required to be rejected under Order 7 Rule 11 CPC and in case plaint survives against certain defendants and / or properties, then Order 7 Rule 11 CPC will have no application at all and that suit as a whole must then proceed to trial. The relevant portion of the said judgment is reproduced hereinnbelow:-

*“2. An application dated 8-7-2016 was filed by the Defendant(s) under Order VII Rule 11 stating that the plaint disclosed no cause of action. By the impugned judgment dated 7-9-2016, it has been held that the plaint is to be bifurcated - it discloses no cause of action against the Directors i.e. Defendant Nos. 2 to 4 but the suit is to continue against the*



**Defendant No.1-Company.** It has further been held that the defendant, in any case, is barred from filing a written statement in the suit as he has taken inordinate time to do so.

3. In our view, the impugned judgment is wrong on principle.

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8. We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order VII Rule 11. **In all such cases, if the plaint survives against certain defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.**

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10. In contrast to the above provisions, which apply on a demurrer, the provisions of Order XIV Rule 2, read as follows:

“2. Court to pronounce judgment on all issues.-(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or



*(b) a bar to the suit created by any law for the time being in force,*

*and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”*

*The Court is vested with a discretion under this order to deal with an issue of law, which it may try as a preliminary issue if it relates to the jurisdiction of the Court, or is a bar to the suit created for the time being in force. Obviously, this provision would apply after issues are struck i.e. after a written statement is filed. This provision again cannot come to the rescue of learned counsel for the respondent.*

***11. This being the case, we set aside the impugned judgment and grant the defendants in the suit a period of eight weeks from today within which to file their written statement after which the suit will proceed to be tried.”***

17. Defendant no.3/predecessor-in-interest of the petitioners had already filed written statement on 03.01.2019 and it would be open to the petitioners to raise all pleas which have been raised in the said written statement during the course of trial. In view of the abovesaid facts and circumstances, the order dated 31.08.2022 vide which the application under Order 7 Rule 11 CPC has been dismissed is in accordance with law and deserves to be upheld.

18. The Hon'ble Supreme Court in the case of "***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil***", reported as (2010) 8



**Supreme Court Cases 329**, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227, but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

19. Keeping in view the above said facts and circumstances, the impugned order deserves to be upheld and is accordingly upheld and the present revision petition filed by the petitioner being meritless, deserves to be dismissed and is accordingly dismissed.

20. It would be relevant to note that the observations made in the present order have been made on the basis of reading of the plaint and the documents referred to in the plaint, which are only relevant for deciding an

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application under order 7 Rule 11 CPC and the said observations should not be construed as final expression on the merits of the case, which the trial Court would decide after granting due opportunities to all the parties concerned to lead their evidence and after hearing all the parties concerned, independently and in accordance with law.

**(VIKAS BAHL)**  
**JUDGE**

**September 11, 2025.**

*Davinder Kumar*

Whether speaking / reasoned  
Whether reportable

Yes/No  
Yes/No