

(2010) 11 RAJ CK 0181

In the Rajasthan High Court

Case No : Civil Revision Petition No. 204 of 2010

M/s Gulecha Builders

APPELLANT

Vs

Chandra Surana and Others

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115

Citation : (2010) 11 RAJ CK 0181

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas

1. Heard learned counsel for the petitioner.
2. This revision petition u/s 115 of the CPC has been filed against the order dated 19.08.2010 passed by Addl. District Judge No.3, Jodhpur by which the application filed under Order 7 Rule 11 of the CPC by the petitioner - defendant was rejected.
3. According to Order 7 Rule 11 CPC, suit can be dismissed upon perusal of pleadings of the suit, if no cause of action arises or the suit is barred by law.
4. In this case, it is revealed from the order impugned that trial Court while deciding the application filed under Order 7 Rule 11 CPC has specifically observed that cause of action is in existence and upon pleadings, adjudication is required by the court after framing issues whether the property in question was belonging to Joint Hindu Family and whether plaintiff has any right, therefore, the application is dismissed.
5. After perusing the impugned order and plaint, I am of the view that no error has been committed by the trial Court while rejecting the application filed by the petitioner defendant under Order 7 Rule 11 CPC. Therefore, no case is made out

for interference. Hence, this revision petition is dismissed.

6. However, it is submitted by learned counsel for the petitioner that learned trial court may be directed to first frame preliminary issue and decide the same. In my opinion, it is always open for the parties to file application for framing preliminary issues and no separate order is required to be passed in this revision petition. The petitioner is always at liberty to move such an application for framing preliminary issue in accordance with the provisions of C.P.C.