RE: INTER PLEADER SUIT FOR DECLARATION.

APPLICATION FOR REJECTION OF PLAINT AND DISMISS THE SUIT.

Present: Shri S.K. Goel, Advocate for applicant/defendant No. 2.
Shri Neeraj Gautam, Advocate for respondent/plaintiff.

ORDER:

This order shall dispose of an application under Order VII Rule 11 of Civil Procedure Code, 1908 (in short "CPC") filed by the applicant/defendant No. 2.

2. It is mentioned in the application as well as argued by learned counsel for applicant/defendant No. 2 that the present suit has been filed by the plaintiff at the instant of defendant No. 1, which society has no existence after passing of resolution dated 31.03.2011 by the said society. The applicant society is owner of shop in dispute, along with land underneath of the said shop, in its own right and is not claiming title through defendant No. 1. The suit property is constructed on land comprising in Khewat No. 1041, Khatoni No. 1164, Rect. No. 216, Khasra No. 23(3-17), situated at Darra Kalan, Thanesar, which was purchased by Dhiman Brahman Panchayat Thanesar, which was an unregistered society. The said unregistered society had merged in the applicant society vide resolution dated 28.02.2011. The suit property never remained under the ownership of defendant No. 1. Applicant society is owner-cum-landlord of the shop in dispute. The shops constructed on the said land, including the shop in dispute, are duly recorded under the ownership of defendant No. 2 society in the property

register maintained by Municipal Council, Thanesar and defendant No. 2 Society is paying the property tax of the said property. The plaintiff has no right to challenge the ownership of defendant No. 2 society over the shop in dispute and is bound to pay rent of the shop in dispute to the defendant No. 2 Society. The said land along with super structure is owned and possessed by defendant No. 2 and defendant No. 2 is collecting the rent of 33 shops out of 35 shops. The amount of rent is being deposited by the defendant No. 2 in account No. 0873000111087206 in Punjab National Bank, Thanesar regularly. The said account is being operated through office bearer of defendant No. 2. The plaintiff is bound to pay the rent of shop to the defendant No. 2 and has no right to file the present suit. Concluding his arguments, learned counsel for the defendant No. 2 prayed for allowing the instant application and for rejection of plaint. In support of his contention, learned counsel for the applicant/defendant No. 2 placed reliance upon case law titled as ***Yeshwant Bhikaji Vilankar versus Sadashiv Govind Arekar 1940 AIR (Bombay) 414, Jugal Kishore versus Bhagwan Dass AIR 1990 (P&H) 82 & M/s Metro Tyres Limited versus Mahesh Chander 2011 (4) CCC 446 (P&H).***

3. Per contra, the instant application has been vehemently opposed by learned counsel for the respondent/plaintiff by filing reply to the same. It is mentioned in the reply as well as argued by learned counsel for the plaintiff that the present application is not maintainable and same

has been filed by applicant/defendant No. 2 just to protract the trial and to harass the plaintiff. It was further contended that it is an admitted fact in the averments of the application that the dispute regarding "determination of ownership/right" is in existence sing long and the litigation in this regard is also pending. So, this plea and admission on the part of applicant, itself sufficient to support the contention raised by the plaintiff and also sufficient to establish the factum of maintainability of present litigation. The applicant himself admitted and claiming the right over the suit property being a landlord, whereas, as per the averments of the plaint, the rent agreement executed between the defendant No. 1 and plaintiff. The possession of the plaintiff is not disputed by any of the defendant. Whereas, both are claiming their land-lordship over the suit property. So in such circumstances, the plaintiff has no other option except to file the present suit. Moreover, the plaintiff is regularly tendering the rent as per the order of the Court.

4. It was further contended that admittedly one another interpleader civil suit titled as 'Dharam Pal versus Vishav Karma Mandir Sabha' is still pending ans is fixed for defendant's evidence, in which, the determination of rights of both the defendants are to be decided and thus, in view of the pendency of another suit, the plaint in the present suit cannot be rejected, rather it is the duty of the defendants to get consolidated the present suit with the said interpleader suit in order to save the previous time of the Court. At the end, concluding his arguments,

learned counsel for the plaintiff prayed that instant application be dismissed with heavy costs.

5. At the outset, it is pertinent to mention here the well settled preposition of law as application to provisions of Order VII rule 11 of CPC, 1908. It has been held in a catena of cases by Hon'ble Punjab and Haryana High Court including ***Rajiv Dhulla versus M/s. Aravali Apparels Pvt. Ltd. CR No. 1401/2016 date of decision 24.02.2016 (P&H),*** in which, Hon'ble Court has recently relied upon ***P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy versus P. Neeradha Reddy 2015 (2) RCR (Civil) 43*** and *held that for deciding the application under Order VII Rule 11 CPC only the contents as mentioned in the plaint are to be looked into and the Court cannot look into the evidence or the stand of defendants.*

6. From the perusal of case file, it transpires that applicant/ defendant No. 2 has sought for rejection of plaint on the ground that present suit is not maintainable under Order 35 Rule 5 CPC, which precludes a tenant from filing a interpleader against the landlord. Before dwelling into the merits of the case, it is imperative to delineate on the background of the case. The plaintiff has averred in the plaint that he is tenant under defendant No. 1, and defendant No. 2 has claimed his ownership over the suit property and claimed the rent from the plaintiff in the year 2013 on the ground that defendant No. 1 Society has merged in defendant No. 2 vide Resolution dated 31.03.2011 and 05.04.2011. The order 35 Rule 5 CPC proclaims that:-

5. Agents and tenants may not institute interpleader-suits:- *Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.*

7. According to the aforesaid provision, a tenant cannot sue his landlord for compelling him to interplead with any persons other than persons making claim through such landlord. If the other person is claiming the property through the previous landlord and then asking for the rent from the tenant, then to settle such different claims by two or more persons, the tenant can file interpleader suit, but if the other person is claiming the right and interest in the property independently without any reference to the previous landlord and claiming the rent from the tenant, then the interpleader suit filed by the tenant is not maintainable.

8. Thus, Order 35 Rule 5 CPC clearly stipulates that tenants cannot file an interpleader suit against their landlord. The object in that a tenant cannot compel rival claimants of ownership to litigate *inter se*. On a meaningful reading of the plaint, it is evident that the plaintiff has not sought adjudication of ownership right but has confined his claim to protection of possession as a tenant and to ensure that rent is paid to the person held entitled by the Court.

9. In the present case, the applicant/defendant No. 2 has claimed that he is the owner of the suit land, over which, the suit property

has been constructed and defendant No. 1 Society has been merged in defendant No. 2 vide Resolution dated 31.03.2011 and 15.04.2011. Thus, in the considered opinion of this Court, defendant No.2 is claiming the ownership of the suit property through defendant No. 1. The law is well nigh settled that where the defendant No. 2 is claiming the ownership of the suit property through defendant No. 1, the suit of interpleader is maintainable.

10. Further the plaintiff has averred in the plaint that he does not claim any interest in the suit property except the settlement of dispute of land-lordship between the defendants and the plaintiff is ready to deposit the arrears of rent on the directions of the Hon'ble Court. Thus, while the Court cannot permit a tenant to challenge the ownership of landlord, but the Court can certainly permit the tenant to safeguard his possession, especially where rival claimants are issuing notices. The bar of Order 35 Rule 5 CPC is therefore not attracted in its strict sense. In ***Daljit Singh versus Kuldeep Singh, 2013 (1) RCR (Civil) 257 (P&H)***, Hon'ble High Court held that *although, filing of interpleader suit by a tenant is barred, a tenant is entitled to protect his possession.* At this stage, there is nothing on record to suggest that there is a collusion between the plaintiff and defendant No. 1 as plaintiff has categorically stated in the plaint that he seeks no other interest in the suit property. At this stage of adjudication of application for rejection of plaint, the Court need not dwell into the written statement and on the merits of the case. Further, question of

maintainability is a mixed question of law and fact, which needs to be adjudicated by going through evidence, which is not permitted at this stage of the adjudication of application under Order VII, Rule 11 CPC.

11. Hence, in view of my above discussion, this Court does not find any merit in the instant application and accordingly, application in hand stands **dismissed**. However, nothing contained in this order shall be construed as an expression of my opinion on the merits of the case.

Pronounced:
19.08.2025

(Dr. Mohini),
Addl. Civil Judge (Senior Division),
Kurukshetra. 19.08.2025
(UID:HR0356)

Note: This order contains seven pages and all pages have been checked and signed by me.

(Dr. Mohini),
Addl. Civil Judge (Senior Division),
Kurukshetra. 19.08.2025
(UID:HR0356)

(Ravi Kumar, SGG-I)

RAVI KUMAR
"I attest to the accuracy and authenticity of this document."
Digitally signed by RAVI KUMAR
Location: District Courts Kurukshetra
Date: 2025.08.25 16:58:57 +0530