

*I.T.C.Limited Vs. The Debts Recovery Appellate Tribunal and others, 1998(2) SCC 70 and N.V.Srinivasa Murthy and others Vs. Mariyamma (dead) by proposed LRs and others, 2005 AIR 2897* are not attracted to the facts of the present case. Petitioner himself was relegated by the Hon'ble Supreme Court to take recourse to civil proceedings. Petitioner has filed a civil suit for declaration at Derabassi, but he has not impleaded the plaintiff as party defendant in the suit. Plaintiff has filed the present suit in Chandigarh on the premise that office of defendant No.1 is situated in Chandigarh. The transactions were held in Chandigarh and even sale certificate was issued at Chandigarh.

13. Since filing of the suit till date, written statement has not been filed by the defendant No.2/petitioner and his defence has already been struck off on 09.02.2017 against which review application is statedly pending. Evidently, both the parties are involved in numerous litigations.

14. In view of pleadings made in the plaint, issue of jurisdiction, cause of action and limitation can only be decided after framing of necessary issues and leading of evidence by the parties. Even the limitation and cause of action pleaded in the suit cannot be commented upon in the manner as suggested by the petitioner at this stage. In any case, the aforesaid pleas raked up by the petitioner can only be answered by the Court at an appropriate stage after framing of issues and leading of evidence by the parties. If the pleadings made by the plaintiff have created an illusion in respect of cause of action, the remedy available to the petitioner is to resort to Order 10 CPC in accordance with law. Provision in terms of Order 7 Rule 11 CPC is drastic and should be exercised with due care and caution. The triable issues cannot be ignored while considering the plea under Order 7 Rule 11 CPC.

15. In view of above, no indulgence can be granted in favour of the petitioner in this revision petition. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

16. Nothing observed hereinabove would be taken to be a final expression on merits of the case. Trial Court would proceed with the suit on merits in accordance with law.

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## 2019(4) CIVIL COURT CASES 695 (S.C.)

### SUPREME COURT OF INDIA

NAVIN SINHA & INDIRA BANERJEE, JJ.

Civil Appeal No.2896 of 2009, D/11.09.2019.

Raja Ram  
Vs  
Jai Prakash Singh & Ors.

**(i) Mental impairment - Old age - There is no presumption with regard to mental impairment only because of old age to equate it with complete loss of mental faculties by senility or dementia - Ageing is a process which affects individuals differently at distinguishable ages. (Para 9)**

**(ii) Hardness of hearing - Old age - Hardness of hearing by old age cannot be equated with deafness. (Para 10)**

**(iii) Bed ridden - Plea of - Deceased appeared before Sub Registrar for registration - It demolishes the entire case of plaintiff that deceased was bed ridden. (Para 10)**