

114

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

CR No.2153 of 2015

Date of decision: March 26, 2015

Rajbir Singh

.....Petitioner

Versus

Kuldeep Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Shalender Mohan, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 10.03.2015 (Annexure P-9), whereby application moved by the petitioner under Order 7 Rule 11 of Code of Civil Procedure, 1908 ('CPC' for short), was dismissed.

Learned counsel for the petitioner has submitted that earlier, respondent No.1 had filed suit for permanent injunction and the same was dismissed in-default. Thereafter, without getting the said suit restored, respondent No.1 has filed the present suit. During the pendency of the suit, petitioner moved an application under Order 7 Rule 11 CPC for rejection of the plaint. The said application was dismissed vide impugned order.

As per the amended plaint, respondent No.1 has now filed suit for declaration to the effect that defendant No.1-Haryana Wakf Board was owner of the plot in question and he had taken the same on lease from the Wakf Board

vide lease-deed dated 02.04.2009 and other defendants had no concern with the suit land. Thus, by way of the present suit, respondent No.1 has sought relief of declaration qua ownership rights of the property in question. Earlier, petitioner had filed, merely a suit for permanent injunction. Hence, the fact that the earlier suit filed by the petitioner for permanent injunction was dismissed-in-default, would not be a ground to dismiss the plaint at the very threshold. The question as to whether the second suit would be maintainable or not is a mixed question of law and fact. Hence, the learned trial Court had rightly dismissed the application moved by the defendants No.1 to 3 under Order 7 Rule 11 CPC for rejection of the plaint.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

March 26, 2015

m.singh