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

Civil Revision No. 358 of 2014 (O&M)

Date of Decision: December 15, 2015

Harjinder Singh

-Petitioner

Versus

Amar Singh and anr.

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Nitin Thatai, Advocate
for the petitioner.

Mr. R. S. Mamli, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (ORAL)

{1}. Plaintiff has assailed order dated 17.08.2013 passed by Civil Judge (Jr. Divn), Ludhiana whereby application under Order 7 Rule 11 CPC for rejection of plaint filed by defendant No.2 has been rejected. Plaintiff filed a suit for permanent injunction against Ganda Singh, Harjinder Singh and Sikander Singh. Harjinder Singh and Sikander Singh are real brothers. Sikander Singh has already died. Plaintiff alleged that he along

with his sons and defendant No.1 are joint owner in possession of property measuring 70 Kanals 12 Marlas situated in village Nizampur, District Ludhiana. Plaintiff is co-sharer with heirs of Gurdial Singh who was father of the plaintiff. After the death of Gurdial Singh, property has been mutated in the name of his legal heirs. In para no.5 of the plaint, allegations have been made against all the defendants. They have given threats in respect of use of electric motor power connection and are having evil eyes on the share of the plaintiff.

{2}. Defendant No.2 by filing written statement has contested the claim of the plaintiff by pleading that the answering defendant has nothing to do with the electric connection or the land and there is no dispute between plaintiff and defendant No.1 nor the answering defendant has issued any threat to the plaintiff. Defendant No.2 claimed that there is no lis between plaintiff and defendant No.2 and no cause of action arises for maintaining a suit against defendant No.2. He filed an application under Order 7 Rule 11 CPC for rejection of plaint qua him. In para no.2 of the application, the following recital has been made:-

“That the suit of the plaintiff is not maintainable and is devoid of merits as such the same is liable to be dismissed. The suit filed is an abuse of the process of

law. The maintainability of the petition is to be seen first and if the suit itself is not maintainable no relief can be granted. Further more the suit filed is an abuse of process of law. The plaintiff has also suppressed material facts. The plaintiff has failed to plead any cause of action against defendant no.2 to file the suit against him. The defendant no.2 has no concern with the suit property or the electric power connection bearing no.N-213 used for the purpose of irrigation. The said suit has been filed against the defendant no.2 just to harass him without any cause of action.”

{3}. Civil Judge (Jr. Divn), Ludhiana vide order dated 17.08.2013 dismissed the application filed by defendant No.2 on the premise that at this stage, only allegations in the plaint are to be seen and no record is available to accord satisfaction on the ground on which rejection of plaint is being sought. That is how, present revision petition came to be filed in this Court.

{4}. In the present revision petition also, petitioner has pleaded that since no cause of action accrues to the plaintiff qua defendant No.2 as defendant No.2 is not concerned about the property in question, nor interfering in the property as claimed by the plaintiff, therefore, qua petitioner/defendant No.2, suit is not maintainable.

{5}. On 27.01.2014, Coordinate Bench of this Court passed the following order:-

“CM is allowed. Annexure P-1 is taken on record subject to just exceptions.

Registry is directed to replace running page 16 of the paper-book with page 3 of the CM.

Let an affidavit be filed disclosing the connection between the plaintiff and defendant no.2 and whether the land of the petitioner is contiguous or in proximity with the land of the petitioner where the disputed electric meter stands installed to run a tube-well.

Adjourned sine die for the needful.”

{6}. Pursuant to this order, petitioner/defendant No. 2 has filed an affidavit of defendant No.2, specifically mentioning therein that the defendant No.2/petitioner belongs to the same village in which respondent No.1 lives but he was serving in government job as Assistant Engineer in the office of Executive Engineer, Project, P.H.Divn No.3, Chandigarh and retired from the said post on 31.10.2007. For the last 35 years, he was residing in Chandigarh and there was no occasion for him to interfere in the possession of the plaintiff over the suit land as projected by the plaintiff in the plaint. In the affidavit also, defendant No.2 has maintained that defendant No.2 is not related to defendant No.1 and he lived in Chandigarh during the

currency of his job and there is no close intimacy between the petitioner and respondent No.1.

{7}. After hearing this case for sometime, it has been found from categorical stand of the petitioner that he has nothing to do with the suit property in any manner. On pointed question to learned counsel for the respondent/plaintiff, Mr. R.S. Mamli, Advocate states that let an appropriate statement be made by defendant No.2 before the trial Court in the context of his being not related to the suit property as well as defendant No.1 in any manner and in the event of making such statement by defendant No.2 before the trial Court, the plaintiff would withdraw suit qua him before the trial Court.

{8}. With the aforesaid observation, this revision petition is disposed of.

December 15, 2015

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**