

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

**Civil Revision No.5142 of 2015
Date of Decision: August 14, 2015**

Sushil Kumar Mehta

.... Petitioner

vs.

Krishan Kumar Mehta and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Ms. Pallavi Singh, Advocate for the petitioner.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 03.07.2015 (Annexure P-1) passed by learned Civil Judge (Jr. Divn.), Panchkula, whereby the application of the petitioner-defendant No.1 under Section 12 read with Order VII, Rule 11 CPC for rejection of the plaint, was dismissed.

Brief controversy is that Nand Lal Mehta, father of the parties had earlier filed a suit for injunction restraining the present petitioner-defendant No.1 from forcibly dispossessing him, his son and his (son's) family from House No.864, Sector 12, Panchkula. No declaration was sought. Nand Lal Mehta died during the pendency of

the suit and the plaintiff and the present petitioner-defendant No.1 and other LRs of Nand Lal Mehta were brought on record. The suit was withdrawn without being granted permission to file a fresh one on the same cause of action.

Now, Krishan Kumar Mehta, one of LRs of Nand Lal Mehta filed a suit seeking declaration to the effect that the plaintiff, defendant No.1 and proforma defendant Nos.3 to 7 are in possession of 1/7th share each of the suit house.

I have heard learned counsel for the petitioner and have also carefully gone through the case file.

The plea of learned counsel for the petitioner is that first of all previous suit was withdrawn without being given the permission to file a fresh one on the same cause of action. Secondly, another civil suit No.265 of 2007 was decreed in favour of plaintiff-defendant No.1, in which he was held to be the owner of the said house. The appeal was also dismissed by the the High Court. Therefore, the suit is barred by the principal of *res judicata*.

The plaint is sought to be got rejected under Order VII, Rule 11 CPC on the ground that the present suit is barred under Order II Rule 2 CPC and Order XXIII, Rule 1 CPC as well as by the principal of *res judicata*.

In the previous suit, Nand Lal Mehta, father of the parties sought injunction to protect his possession. Therefore, it will be a question of fact whether the plaintiff can bring a declaratory suit independent to the rights of his father.

So far as the application for the principle of *res judicata* is concerned, it is a question of fact, which is to be decided after framing of the issues and leading evidence by both the parties. However, this is not a ground to reject the plaint. Thus, there is no ground to interfere in the impugned order.

Accordingly, the present revision petition stands dismissed.

August 14, 2015
sarita

(KULDIP SINGH)
JUDGE