

Civil Revision No.5350 of 2015
Date of Decision: August 20, 2015

.... Petitioners

VS.

.... Respondent

Present: Mr. Vaibhav Sehgal, Advocate for the petitioners.

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 02.05.2015 (Annexure P-1) passed by learned Civil Judge (Jr. Divn.), Ludhiana, vide which the application of the petitioners-defendants under Order XIV, Rule 2(2) CPC for framing preliminary issue regarding suit being barred under Section 11 and Order II, Rule 2 CPC, was dismissed.

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

The prayer of learned counsel for the petitioners is that the issue regarding *res judicata* and order II, Rule 2 CPC be treated as preliminary, but the lower court has refused to do so.

I am of the view that there is no illegality in the impugned order, whereby such prayer was declined. The fact whether the

principle of *res judicata* is attracted and the provision of Order II, Rule 2 CPC are attracted is always a mixed question of fact and law.

For attracting Order II, Rule 2 CPC, pleadings are required to be proved and for proving *res judicata*, the copies of the judgments of the lower court as well as of the appellate court, if any, are to be proved. Therefore, the trial court has rightly decided not to treat these issues as preliminary issues.

Thus, there is no ground to interfere in the impugned order.

The present revision petition is dismissed accordingly.

August 20, 2015
sarita

(KULDIP SINGH)
JUDGE