

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

**Civil Revision No.6461 of 2013
Date of decision: 14.08.2015**

M/s GN General Mills Banga and others

.....Petitioners

versus

Kailash Nath

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sandep Jain, 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 is the order dated 4.9.2013 (Annexure P7), passed by the learned Civil Judge, Junior Division, Shaheed Bhagat Singh Nagar, vide which, application of the defendants under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint was dismissed.

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

The plea of learned counsel for the petitioners is that in the plaint, the plaintiff has stated that he has sold the land, therefore, he cannot maintain the suit for directing the defendants to remove the alleged encroachment on the passage. It has been further argued that the lower Court has not decided the application on merit.

I am of the view that now this Court will proceed to decide the application on merit without going into as to what has been held

by the lower Court.

The perusal of the plaint shows that the plaintiff has filed a suit for mandatory injunction for directing the defendants to remove the encroachment on the passage in dispute. It is claimed in para No.1 of the plaint that the plaintiff earlier owned agricultural land on the northern side of the passage. The said land has been sold by him 4-5 months ago. At the time of sale, the plaintiff undertook that he will remove the encroachment upon the passage, if any, made by the defendants. Subsequent to the sale deed, at the time of delivery of possession, it came into light that defendants have encroached upon the passage in dispute by way of ploughing the same and annexing the same with their land. Plaintiff is duty bound to get the said encroachment removed.

I am of the view that the averments made in para No.1 of the plaint, does not make out any case for rejection of the plaint under Order 7 Rule 11 CPC. Plaintiff claims that under the terms of sale deed, he was bound to do some act and get the encroachment removed. In the sale deed, a condition was imposed upon the plaintiff that he will get the encroachment removed. Therefore, it cannot be said that from its face the plaintiff has got no cause of action to file suit. The suit is also not in a representative capacity. Therefore, the plaint could not be rejected under Order 7 Rule 11 CPC.

Consequently, the present revision is dismissed.

14.08.2015

gk

GOPAL KRISHNAN
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I attest to the accuracy and
authenticity of this document
High Court Chandigarh

(Kuldip Singh)
Judge