

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 8201 of 2014

Date of Decision: July 16, 2015

M/s Hari Chand and Sons and another

.....Petitioners

Vs.

Uma Shankar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Amit Jain, Advocate
for the petitioners.

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M.M.S. BEDI, J. (ORAL)

This is defendants' revision petition against the order annexure P-4 dated November 19, 2014 dismissing the application under Order 7 Rule 11 CPC for rejection of plaint on the ground that the suit of the plaintiff-respondent is barred under Section 69 of the Indian Partnership Act as the firm is not a registered firm.

Counsel for the petitioners has drawn my attention to the cross-examination of plaintiff- respondent wherein he has admitted the said fact while appearing as a witness as PW1.

I have heard learned counsel for the petitioners and with his assistance gone through the contents of the suit which is a suit for declaration and mandatory injunction raising a dispute regarding a Will alleged to have been executed by the father of plaintiffs in the year 1985 besides raising a controversy about the rights in context to the assets of the partnership firm M/s Hari Chand and sons. The issues have already been framed in the case. The question raised in the application under Order 7 Rule 11 CPC regarding maintainability of the suit is a mixed question of law and fact. Besides this, the suit involves a number of issues not all related to the partnership. It is the statutory duty of Civil Court to pronounce judgment on all the issues as per the mandate of Order 14 Rule 2 CPC.

In view of said circumstances, this Court is of the opinion that the maintainability of the suit in view of provisions of Section 69 of the Indian Partnership Act would be a mixed question of law and fact in the present case which is required to be adjudicated upon at the final stage alongwith the decision of other issues. No ground is made out for interference in the impugned order.

Dismissed. Nothing said in this order will prejudice the rights of the petitioners at the time of final disposal of the case.

July 16, 2015
sanjay

(M.M.S.BEDI)
JUDGE