

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

**Civil Revision No. 3660 of 2015(O&M)
Date of decision : 25.10.2016**

**Gram Panchayat Village Raipur Khurd,
U.T., Chandigarh and another**

..... Petitioners

versus

Hari Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Hitesh Kaplish, Advocate for the petitioners.

Mr. Rakesh Gupta, Advocate for respondents No. 2 and 3.

REKHA MITTAL J. (Oral)

The present petition has been preferred against order dated 28.01.2015(Anexure P-1) passed by Civil Judge(Junior Division), U.T. Chandigarh whereby an application filed by the petitioner under Section 11 of the Code of Civil Procedure, 1908 (for short "the CPC") has been dismissed.

Counsel for the petitioners would contend that respondents No.1 to 4/plaintiffs have filed suit for permanent injunction restraining the defendants to forcibly dispossess the plaintiffs from the houses constructed in khasra No.20 of abadi of village Raipur Khurd. It is further submitted that the issue raised in the present suit already stands decided in civil suit titled Hari Singh v. Raghubir Singh decided on 12.11.1990, therefore, the present suit is barred by principle of resjudicata. It is further submitted that the trial Court has committed a gross error rather illegality by negating the plea of the petitioners for dismissal of the suit.

Counsel for the respondent/plaintiffs, on the contrary, has submitted that as a fresh cause of action had accrued in favour of the plaintiffs for filing the suit for injunction, the previous suit and the judgment and decree passed therein would not enure to benefit of the petitioners to seek dismissal of the suit by filing an application.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Be that as it may, the question of a suit being barred by resjudicata cannot be decided on the basis of an application because it requires an issue to be framed by the Court and thereafter to permit the parties to adduce evidence in support of the respective contentions. That being so, no error much less illegality can be noticed in the impugned order dismissing the application filed under Section 11, CPC.

During the course of hearing, it has been revealed that issues in the case are yet to be framed by the trial Court. Hence, the petitioners are left at liberty to press their claim for framing a preliminary issue qua the question of resjudicata and the same would be decided by the trial Court in accordance with law without being influenced by any observations made in the impugned order.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(REKHA MITTAL)
JUDGE

October 25, 2016

sunita

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No