

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 3937 of 2014(O&M)
Date of decision : March 4, 2016

Rattan Singh

..... Petitioner

Versus

Kashmir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Kotla, Advocate
for the petitioner.

Mr. Virendra Rana, Advocate
for respondent Nos.1 to 12.

1. Whether reporters of local papers 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?

Amit Rawal, J (oral).

The petitioner is aggrieved of the order dated 8.5.2014 (Annexure P-5) whereby the application filed under Order 7 Rule 11 CPC for rejection of plaint filed at the instance of the petitioner-defendant has been dismissed.

Learned counsel appearing on behalf of the petitioner submits that already partition proceedings (Annexure P-1) had attained finality on 15.6.2012. The suit was not maintainable and accordingly application under Order 7 Rule 11 CPC was filed which has erroneously been dismissed.

Learned counsel appearing on behalf of the respondents submits that the plaintiffs-respondents were not party in

the partition proceedings, therefore the suit is maintainable seeking declaration and permanent injunction. Partition proceedings have been passed separately.

I have heard learned counsel for the parties and appraised the paper book and of the view that the application at this stage was not maintainable, for the reason that on going through the Memo of Parties it is seen that plaintiffs are not respondents in the partition proceedings. The court has to see pleadings in the plaint and not defence. It is not a case where as per the pleadings in the plaint, the plaint is liable to be rejected as per provisions of Order 7 Rule 11 CPC.

The petitioner-defendant shall have right to lead evidence in support of the averments viz-a-viz maintainability of the suit and not in the manner and mode as adopted by the petitioner.

There is another aspect of the matter, assuming for an argument sake that the respondents are not party to the partition proceedings and the appeal was maintainable, the appeal would have been rejected on this ground alone.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

March 4 , 2016
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