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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5153-2014

Date of Decision : January 8th, 2016

Ombir @ Om Veer

.... Petitioner

Versus

Smt. Richa Sharma and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. Rakesh Nagpal, Advocate,
for the petitioner.

Mr. Rajinder Goyal, Advocate,
for respondent Nos. 1 and 2.

SHEKHER DHAWAN, J.

Present petition under Article 227 of the Constitution of India is for setting aside the order dated 31.5.2014 [Annexure P/7] passed by learned Civil Judge [Jr. Division], Kaithal, whereby application under Order XIV Rule 2 CPC filed by the petitioner for framing preliminary issue regarding the fact that the present suit is barred on the principle of *res judicata*, was dismissed.

Learned counsel for the petitioner submitted that undisputedly, two separate litigation were going on and the same cannot proceed simultaneously and same are barred on the principle of *res judicata*.

Learned counsel for the respondents submitted that there are

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two separate suits going on i.e. One for Specific Performance and the other for Permanent Injunction and the relief claimed in both the cases as well as the subject matter in both the cases is entirely different. More so, the principle of *res judicata* is a mixed question of law and facts and the same cannot be decided as a preliminary issue as the fact requires leading of evidence. That way, the Court has rightly dismissed the application for treating the issue regarding *res judicata* to be preliminary issue.

Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that it is not disputed that in the given circumstances, the real controversy is whether the parties to the litigation are the same or they are claiming their title through same parties and the subject matter of both the suits is same or not because there are conflicting claims. All these facts require leading of evidence. Law on the point is settled that preliminary issues should be decided for expeditious disposal of the case, but for decision of preliminary issue the parties cannot be and should not be allowed to lead evidence. If any issue involves leading of evidence, that cannot be considered as preliminary issue. Rather, the said issue is to be decided alongwith remaining issues. In the present case, when the real dispute between the parties i.e, whether parties to the litigation are same and whether subject matter of both the litigation is the same, is different, it shall be mixed question of law and fact to be decided on the basis of evidence to be adduced by the parties. Such a view was taken by Hon`ble Supreme Court of India in **Major S.S.Khanna Vs. Brigadier F.J. Dhillon, 1964 AIR [SC] 497**. As such, the issue regarding the suit being barred by the principle of *res judicata* cannot be decided as preliminary issue and the said prayer has

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rightly been declined by the Court below. There is no illegality in the said order warranting interference by this Court while exercising jurisdiction in such matters. The present petition stands dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

January 8th, 2016
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