

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

CR No.5626 of 2016(O&M)

Date of decision:31.8.2016

Charat Singh

....Petitioner

VERSUS

Somesh Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Himanshu Puri, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 18.03.2016 (impugned order) whereby application filed by the petitioner under Order 7 Rule 11 read with Section 9, 151 of the Code of Civil Procedure, 1908 (in short 'CPC') and Section 158 of the Punjab Land Revenue Act, 1887 has been dismissed.

The main contention raised by counsel for the petitioner is that as the land in dispute is agricultural land, civil Court does not have the jurisdiction to decide the question of partition of land and the same lies in exclusive domain of revenue Courts. Counsel has also made a vain attempt to argue that in application for final decree, the decree holder wants to increase his share by pleading certain additional facts.

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

The instant application for rejection of plaint was filed by the petitioner in proceedings for final decree to be drawn on the basis of

preliminary decree for partition passed by the trial Court vide judgment and decree dated 30.04.2012 (Annexure P-3). A perusal of the judgment would evident that in those proceedings, specific issues were framed by the trial Court with regard to non-maintainability of the suit and civil Court having no jurisdiction to try and decide the suit. Counsel for the petitioner fairly concedes that both these issues were answered against the petitioner as well as other defendants. As the trial Court has already discarded plea of the defendants including the petitioner that Civil Court has no jurisdiction to partition the suit land, the petitioner cannot be allowed to re-agitate the same issue by filing an application under Order 7 Rule 11 CPC in proceedings for final decree.

So far as the plea that the decree holder is claiming more share in the suit land by pleading additional facts, the same may be raised before the trial Court and would be decided at an appropriate stage of the proceedings, in accordance with law.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed *in limine*.

AUGUST 31, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no