

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

CR No.5434 of 2014
Date of decision : 27.10.2016

Ramesh Sharma and others

...Petitioners

Versus

Rakesh Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Vivek Salathia, Advocate for the petitioners.

Mr. Manish Prabhaker, Advocate for respondent No.1.

Ms. Arti Kataria, Advocate for
Mr. Vikas Gupta, Advocate for respondent Nos.2 and 3.

AMIT RAWAL, J. (Oral)

The petitioner(s)-plaintiff(s) are aggrieved of the impugned order, whereby application moved by respondents-defendants by invoking the provision of Section 11 read with Order 7 Rule 11 of the Code of Civil Procedure, has been allowed.

Mr. Vivek Salathia, learned counsel appearing on behalf of petitioner(s)-plaintiff(s) submits that trial Court has erroneously allowed the application by invoking the provision of Section 11 and, therefore, revision petition would be maintainable as plaint has not been rejected but dismissed. He further submits that petitioner(s)-plaintiff(s) had instituted the suit seeking partition of the residential house on the premise that it was

owned by their father Dewan Chand Sharma and the respondents are none-else but the sons of Dewan Chand Sharma but Court dismissed the suit on the premise that property was owned by mother. It is in this backdrop of the matter, present suit was filed but the same has been rejected as indicated above. He further submits that manner and mode adopted by the trial Court was not justified in the law as entire pleadings of the previous suit, much less, evidence has to be seen for the adjudication of the lis and trial would begun when the issues are framed and thus urges this Court for setting aside of the order under challenge.

Per Contra, Mr. Manish Prabhaker, learned counsel appearing on behalf of respondent No.1 submits that factum of ownership of Dewan Chand Sharma was emphatically denied in the previous round of litigation. This fact was in the knowledge of the petitioner, thus should have sought amendment of the plaint. Having failed to do so, present suit is hit by doctrine akin to Res Judicata and rightly so the provision of Section 11 has been invoked and suit has been dismissed, thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for parties and appraised the paper book and of the view that for the adjudication of the controversy indicated above, the Court could not have to dismissed suit summarily but ought to have called upon party to file written statement. At the best, issue of maintainability of the suit on any of the legal ground could have been treated as preliminary but not in the manner and mode as indicated above as pleadings of previous suit are required to proved, thus being mixed question of law and fact

For the reasons aforementioned, I am of the view that order under challenge is not sustainable in the eyes of law and is hereby set aside.

Revision petition is allowed.

Liberty is granted to the respondent(s) to raise plea in the written statement.

27.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No