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

Civil Revision No.5895 of 2016

Date of Decision: 25.10.2016

KARNAIL SINGH

.....Petitioner

Vs

CHHOTA SINGH AND ORS.

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Aakash Singla, Advocate
for the petitioner.

Mr. Sharad Aggarwal, Advocate
for the respondent No.6.

RAJ MOHAN SINGH, J (Oral)

[1]. Petitioner has assailed order dated 10.08.2016 passed by Civil Judge (Jr. Divn.) Rupnagar vide which suit filed by the petitioner was dismissed.

[2]. Plaintiff filed a suit for declaration to the effect that he was owner in possession to the extent of 1/12th share of the land as depicted in the plaint.

[3]. In the aforesaid suit, an application was filed by defendant No.6 for dismissal of the suit as having become infructuous on the ground that the suit was filed by the plaintiff

on the basis of sale deed dated 28.05.2012 claiming share on the basis of that sale deed. At the time of sanctioning of mutation, name of the plaintiff could not be mentioned in the revenue record, but before filing of the suit the revenue authorities had sanctioned the mutation *qua* the share of the plaintiff. Since the relief has already been granted by the revenue authorities, therefore, the suit cannot proceed.

[4]. Defendant No.6 also pleaded that the filing of the suit was intended to stall the partition proceedings initiated by defendant No.6 which were pending before the Assistant Collector, IInd Grade, Morinda. The plaintiff was seeking adjournments of the partition proceedings till disposal of the suit.

[5]. Trial Court dismissed the suit of the plaintiff on the premise that revenue authorities had already rectified their mistake by resorting to '*Sehat Indra*j' and the consequent action was incorporated in the revenue record thereby mentioning the name of the plaintiff in the mutation No.1566 dated 15.10.2015. Since the plaintiff was shown owner to the extent of his share, therefore, nothing survived in the suit and the same was accordingly dismissed having become infructuous.

[6]. Learned counsel for the petitioner submits that after

filing of the suit, the same could have been dismissed under Order 7 Rule 11 CPC. The suit could have also been decreed on filing of consenting written statement or could have been dismissed or decreed at the final stage after leading evidence.

[7]. The order impugned herein does not qualify any of the requirement. Defendant Nos.1 to 5 were already proceeded against *ex parte* before the trial Court. In this revision petition, also, as per office report all the respondents were duly served except respondent No.3, who lives in Panchkula and occasionally used to visit the village.

[8]. Be that as it may, respondent No.6 is the contesting respondent at whose instance the impugned order came to be passed. Partition proceedings have been initiated at his instance.

[9]. Having considered the controversy, I am of the view that the impugned order does not qualify the test of provisions under Order 7 Rule 11 CPC, nor the same can be treated to be an order on merits or on account of any consent given by the plaintiff.

[10]. In view of above, the impugned order is hereby set aside and the suit is restored to its original number. The revision petition is accordingly allowed.

[11]. Both the parties are directed to be appear before the trial Court on 21.11.2016.

October 25, 2016

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No