

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

**Civil Revision No. 5628 of 2014
Date of decision-11.02.2016.**

Krishan Kumar and others

..Petitioners

Vs.

Rama

..Respondent

CORAM:- HON'BLE MR. JUSTICE K.KANNAN

Present: Mr. S.S. Dinarpur, Advocate
for the petitioners.

Mr. Vivek.K.Thakur, Advocate
for the respondent.

K.KANNAN, J(Oral)

The suit which is filed for relief of 1/6th share was withdrawn without liberty to file a fresh suit. Fresh suit was indeed filed for the same subject matter. Petitioner has filed a written statement and taken a specific plea of non-maintainability through a fresh application that earlier withdrawal of suit will constitute a bar against a fresh suit under Order 23 Rule 1 C.P.C. The Court has rejected the application to say that by filing a written statement the defendant has waived the right.

The reasoning is wrong. However, a right to partition for a share is recurring course of action. Suit claiming the share in the property and then making it a fresh claim in the suit cannot be taken to extinguish the right to prosecute the suit.

The plaint cannot be rejected on the ground taken by defendant. The defendant shall, however, is permitted to take any legal defence and the same will be considered in the course of trial at the time of argument and in accordance with law.

Petition stands dismissed.

**(K.KANNAN)
JUDGE**

February 11, 2016

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