

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

CR No. 6646 of 2012 (O&M)

Date of decision: February 19, 2016

Shiv Charan

...Petitioner

Versus

Daan Singh and another

...Respondents

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

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. RK Sharma, Advocate,
for the petitioner.

Mr. Sunnu Deep Joneja, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The revision petition is against an order allowing rejection of a plaint. First of all, the revision itself is not competent, for, an order that rejects a plaint is in the nature of a decree and only an appeal is possible. However, the revision has been filed and pending in this High Court and, therefore, I asked the counsel to explain the basis of the suit and how he could maintain an action in the light of the defence taken that the suit was barred by resjudicata.

2. In so doing, I exercise the power under Article 227 of the Constitution to scuttle a fresh process of appeal to a lower court only to examine a point of law. The suit had been filed for declaration and for injunction in relation to a property claiming that he was the owner of the

property against Bhawan Singh and yet another. In respect of the same very subject matter, the petitioner has filed a suit seeking for the relief of injunction on the basis that he is the sole and exclusive owner in possession of the property. Since the injunction was sought on the basis that he was the owner and this ownership being denied by the defendant, the No.1 issue framed in the previous suit was “whether the plaintiff is owner in possession of the suit property?” The Court found under issue No.1 that the plaintiff had not proved his ownership over the property and held “The issue No.1 is decided against the plaintiff...”.

3. The present suit is filed with reference to the very same subject matter making the suit seem different that he had got better documents now which can establish his ownership. It is further contention that the previous suit was only for a bare relief of injunction and the present suit is for the relief of declaration and injunction and hence the difference. The counsel would refer me to the decisions of this Court as well as the Supreme Court purporting to constitute a difference. They are Subhash Chand Versus Prithi Gir and others 2011 (4) PLR 352, Sri Chinnapa V. Corporation of the City of Bangalore AIR 2005 Karnataka 70, Bijivemula Venkata Subba Reddy Vs. Jangam Satya Babu and others 2009 (4) Civil Court Cases 701 and Gram Panchayat of Village Naulakha Versus Ujagar Singh 2000 (4) R.C.R. (Civil) 749. None of these cases refer to an issue of a relief of injunction sought on a particular basis of his ownership and not merely possession. If in this case, the plaintiff has sought for declaration of title and the previous suit also raised the same contention, then the question cannot be re-opened by the plaintiff by digging old documents and attempting to show that he has got a right to the property. An opportunity that he had at the time of

previous trial to establish his ownership when an issue was framed in that regard must be taken as concluding his right and bar him from instituting a fresh suit on the very same cause of action.

4. The rejection of the plaint was justified and I find no reason to interfere with the impugned order. The revision is dismissed.

February 19, 2016
prem

(K.KANNAN)
JUDGE