

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7279 of 2016

Date of Decision: October 27th, 2016

Gurnam Singh

...Petitioner

Versus

Dera Dharam Dhuja Patiala & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.R.S.Mamli, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

Petitioner-defendant is aggrieved of the impugned order, whereby the application moved under the provisions of Order 7 Rule 11 CPC seeking dismissal of the suit (Annexure P-1), has been dismissed.

Mr.R.S.Mamli, learned counsel for the petitioner-defendant submits that Civil Suit bearing No.252-T of 1994 seeking ownership on the basis of adverse possession was filed against the respondent-defendant. The plaintiff herein and defendant therein was proceeded *ex-parte* and the judgment and decree was passed on 27.7.1996. The *ex-parte* judgment and decree was sought to be set-aside, but the same has also been dismissed. It is after dismissal of the application, the present suit has been filed, which is not maintainable. In this regard, the application, aforementioned, was moved.

I have heard the learned counsel for the petitioner-defendant, appraised the paper book and of the view that the judgment and decree dated 27.7.1996 granting ownership by way of adverse possession has been

challenged. It is settled law that any decree obtained by playing fraud, even if the party has been proceeded *ex-parte*, the same can be challenged in the later proceedings, the one chosen by the respondents. It is too premature to seek rejection of the plaint as the averments of the plaint have to be seen and not the defence. The petitioner is entitled to take all the possible pleas as the question of maintainability of the suit would be a mixed question of fact and law.

For the foregoing reasons, no case for interference is made out.

Revision petition stands dismissed.

October 27th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No