

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SAO No.80 of 2011 (O&M)
Date of decision: 14.12.2016

Kumari NeelamAppellant
Versus
Ram Avtar and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL.

Present: Mr. Ashok Tyagi, Advocate for the appellant.
Mr. C.B. Goel, Advocate for respondents No.1 to 3.

REKHA MITTAL J. (Oral)

The present appeal directs challenge against order dated 08.11.2011 passed by the Additional District Judge, Gurgaon whereby the appeal preferred by Ram Avtar and others – respondents/plaintiffs was allowed, the order dated 08.09.2010 passed by the Civil Judge (Jr. Division) Gurgaon rejecting the plaint while deciding application under Order 7 Rule 11 (d) of the Code of Civil Procedure (in short 'CPC') has been set-aside and the matter has been remitted to the trial Court for decision afresh in accordance with law.

Counsel for the parties are ad idem that after completion of pleadings of the parties trial Court may frame issues including issue with regard to the suit being barred by *res judicata* and the same may be treated as a preliminary issue and decided by the trial Court after adducing evidence by the parties *qua* the said issue.

In view of the above, the appeal stands disposed of in the aforesaid terms. The parties through their counsel are directed to appear before the trial Court on 15.01.2017. However, the trial Court shall decide the question of *res judicata* without being influenced by the orders passed on application under order 7 Rule 11 (d) CPC.

14.12.2016
yakub
(REKHA MITTAL)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No