

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

**SAO No.59 of 2016 (O&M)
Decided on: 22.08.2016**

Yogender Kumar and another

....Appellants

Versus

Parmod Kumar and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Pritam Singh Saini, Advocate
for the appellants.

REKHA MITTAL, J.

The present appeal has been directed against order dated 30.04.2016 passed by the Additional District Judge, Narnaul whereby the appeal against order dated 29.05.2015 passed by the trial Court has been allowed, the order in regard to rejection of the plaint has been set-aside with a direction to the trial Court to decide the case on merits and on priority basis as the case is old one and requires speedy disposal.

Counsel for the appellants has submitted that Yogender Kumar son of Sh. Ramji Lal and Rama Devi widow of Sh. Ramji Lal filed the application dated 01.09.2014 on the premise that the suit has been rendered infructuous. Another application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure (in short 'CPC') was filed by Sarbati Devi widow of Sh. Kalicharan, Vinay Kumar and Prem Lata. It is argued that the learned trial Court considered the question of maintainability of the suit and eventually the application filed under Order 7 Rule 11 CPC was allowed and the plaint was ordered to be rejected. The order passed by the trial Court became

subject-matter of appeal preferred at the instance of one of the respondents/plaintiffs namely Parmod Kumar and the Court of appeal set-aside the order dated 29.05.2015. It is argued that as the application filed by Yogender Kumar and Rama Devi was also considered by the trial Court while disposing of the matter vide order dated 29.05.2015, the petitioners have a serious grievance to express against the order passed by the Court of appeal. It is further argued that as the alleged joint land has already been partitioned in proceedings initiated under the Land Revenue Act by the Director Consolidation under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the suit filed by the respondents/plaintiffs has been rendered infructuous.

I have heard counsel for the appellants and perused the paperbook particularly the order dated 29.05.2015 (Annexure A-4) passed by the trial Court and the order dated 30.04.2016 passed by the Court of appeal.

It is an undisputed position of the case that Yogender Kumar and Rama Devi – petitioners/defendants No.3 and 4 filed an application (Annexure P-3) that suit filed by the respondents/plaintiffs has been rendered infructuous. Another application under Order 7 rule 11 read with section 151 CPC (Annexure A-5) was filed by Sarbati Devi, Vinay Kumar and Prem Lata. Though, the trial Court in para 3 of the order dated 29.05.2012 has mentioned that the Court is considering question of maintainability of the suit and application of provision under Order 7 Rule 11 CPC but it is not very clear if the Court has also considered application filed by the present petitioner that the suit has

been rendered infructuous. The trial Court eventually allowed the application under Order 7 Rule 11 CPC filed by co-defendants of the petitioners and the plaint was ordered to be rejected. The appeal preferred by one of the respondents/plaintiffs against order passed by the trial Court was allowed by the Additional District Judge, Narnaul. Counsel for the petitioners is not in a position to satisfy this Court that if the respondents/plaintiffs had a cause of action at the time of institution of the suit, the plaint can be rejected under Order 7 Rule 11 CPC on the ground that the said cause of action is no longer subsisting or in other words has been rendered infructuous. As a matter of fact, the trial Court considered application of the other defendants under Order 7 Rule 11 CPC and decided the same in their favour but the order passed by the trial Court was set-aside in appeal. As the petitioners were not a party to the application filed under Order 7 Rule 11 CPC, they cannot maintain the present appeal seeking setting-aside of the order passed by the Additional District Judge. However, the petitioners would be at liberty to take recourse to appropriate remedy for pressing their application that the suit has been rendered infructuous due to subsequent events.

Disposed of.

22.08.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No