

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

**Civil Revision No.8611 of 2015 (O&M)
Date of Decision: 13.09.2017**

Man Singh and others

.....Petitioners

Vs

Ram Kishan and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Anil Ghanghas, Advocate
for the petitioners.

Mr. A.K. Goel, Advocate
for respondent Nos.1 to 3, 6, 8 to 11, 13 and 14.

RAJ MOHAN SINGH, J.

[1]. The petitioners have assailed the order dated 17.10.2015 passed by the Civil Judge (Jr. Divn.), Loharu vide which application filed by them for framing of additional issue under Order 14 Rule 2 CPC was dismissed.

[2]. Brief facts are that the plaintiffs filed a suit for declaration to the effect that the plaintiffs and proforma defendants are the owners in possession of the suit land on the basis of sale deed dated 06.10.1969. Consequent relief of permanent injunction was also sought seeking to restrain the

defendants from interfering into peaceful possession of the plaintiffs over the suit land.

[3]. The suit was contested by the defendants. An application under Order 14 Rule 2 read with Section 151 CPC was filed by the defendants/petitioners for framing of preliminary issue on the question of *res judicata* and dismissal of the suit thereof. It was claimed by the defendants that plaintiff No.3 Mahender and Madan deceased through legal representatives filed a suit for permanent injunction against the defendants in respect of the suit land seeking permanent injunction, restraining the contesting defendants and other accompanions from interfering into peaceful possession of the plaintiffs in the said suit and proforma defendants. Restraint was sought from demolition of the construction on the suit land and also restraining the defendants from raising any construction over the suit property. The defendants therein contested the suit. They set up a counter claim with the written statement. Trial Court dismissed the suit and decreed the counter-claim. In appeal before the lower Appellate Court, the appeal was dismissed *qua* the substantive relief of the plaintiffs and the counter-claim was dismissed thereby partly modifying the judgment and decree dated 24.07.2009 passed by the trial Court. The Regular Second Appeal filed by the plaintiffs in the

said suit (present defendants) was dismissed. No Regular Second Appeal was preferred against the judgment and decree passed by the lower Appellate Court in the counter claim.

[4]. On the aforesaid premise the application under Order 14 Rule 2 CPC was filed for framing of preliminary issue of *res judicata* in the present suit. The trial Court rejected the prayer vide the impugned order dated 17.10.2015. That is how the present petition came to be filed before this Court.

[5]. At the time of issuing notice of motion in this case, it appears that due to some mis-conception of fact the same was issued on the issue of limitation to be treated as preliminary issue.

[6]. I have considered the arguments of learned counsel for the petitioner in the context of prayer made before the trial Court

[7]. Learned counsel for the petitioners by referring to **Hari Singh and others vs. Surjit Singh and others, 2014(4) R.C.R. (Civil) 955** contended that issue on the plea of *res judicata* can be treated to be a preliminary issue.

[8]. On the other hand, learned counsel for the respondents by referring to **Ramesh B. Deshai vs. Bipin Vadilal Mehta, AIR 2006 SC 3672** and **Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and Ors, 2008(2) R.C.R. (Civil) 879**

contended that the prayer is wholly unsustainable in law. Learned counsel further emphasized that the fact involved in **Hari Singh and others**” case (supra) were different than the one involved herein as the said case was related to evacuee property. Trial Court in the said case proceeded to decide the preliminary issue in favour of the plaintiffs. The defendants in the said suit were the petitioners in the revision petition before the High Court and they had purchased the land situated in the revenue estate of the village in restricted auction. The auction was confirmed by the Settlement Officer and possession was delivered to them and conveyance deed was also executed. Thereafter suit for permanent injunction was filed by the private defendants against the State of Haryana and the auction purchaser on the ground that they were in cultivating possession of the suit land for the last many years and were entitled to transfer of land under Government instructions. They prayed for grant of permanent injunction restraining the defendants from interfering in the possession. The suit was contested by the Department as well as the auction purchaser from whom the petitioners therein had purchased the land being *Harijans* and were entitled for participating in the restricted auction. The suit was dismissed and appeal was also dismissed. The Regular Second Appeal was also dismissed,

holding that the defendants and the appellants therein were not *Harijans* and had no right to challenge the auction. By referring to the peculiar facts of the case, learned counsel submitted that the ratio of the aforesaid judgment was on some different parameters and cannot be applied universally so as to cover the facts involved in the present case.

[9]. Learned counsel by relying upon **Ramesh B. Deshai's** case (supra) contended that the issue of *res judicata* is a mixed question of law and facts and is dependent upon decision of facts and cannot be treated to be as preliminary issue.

[10]. I have heard learned counsel for the parties.

[11]. The mixed question of law and facts cannot be decided without leading evidence on the issue. Similarly in view of **Anathula Sudharkar's** case (supra) the Hon'ble Apex Court has discarded the framing of such issue as preliminary issue. There was no issue regarding title in the earlier suit, any decision on the title given incidentally or collaterally will not operate as *res judicata*. Evidently, the earlier suit was for injunction. Issue of *res judicata* has already been framed along with other issues. The parties would be at liberty to lead evidence at the relevant stage.

[12]. In view of above, at this juncture no indulgence can be

granted in favour of the petitioners for framing issue of *res judicata* to be preliminary issue, therefore, this revision petition is found to be totally bereft of merits and the same accordingly dismissed.

September 13, 2017

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No