

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

CR No. 8297 of 2017(O&M)

Date of decision: 28.11.2017

Surma Ram

.....Petitioner

VERSUS

Tarsem Dass

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Hardeep Singh, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 25.09.2017 (Annexure P-1) passed by the trial Court whereby application (Annexure P-7) for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') filed by the petitioner/defendant has been dismissed.

Counsel for the petitioner, in line, with the averments raised in the application and so also the submissions made before the trial Court would urge that the suit filed by the respondent/plaintiff is bad being barred under Order 2 Rule 2 CPC and Section 11 CPC being hit by the principle of res judicata.

The trial Court by relying upon judgment of Hon'ble the Supreme Court **Gurbux Singh Vs. Bhooralal, AIR 1964 SC 1810** has held that it is for the applicant/defendant to prove the plea of bar under Order 2 Rule 2 CPC by leading evidence. No ground is made out for rejection of plaint as question of suit being barred under Order 2 Rule 2 CPC is a mixed question of fact and law to be decided on the basis of

evidence yet to be adduced. This observation of the Court below is well-founded and liable to be affirmed. Similarly, the issue with regard to suit being barred by principle of res judicata is to be decided by framing an issue, if otherwise arises out of pleadings and on the basis of evidence to be adduced during the course of trial. In this view of the matter, I do not find any error in the order impugned warranting intervention in exercise of supervisory jurisdiction of this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, the petitioner shall be at liberty to pray for framing of specific issues on the questions sought to be raised in case the same arises out of pleadings of the parties. Any such plea raised by the petitioner would be decided by the trial Court in accordance with law.

NOVEMBER 28, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no