

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8500 of 2014 (O&M)
Date of decision: 22.08.2017

Des Raj Sharma (deceased) through LRs and others

... Petitioners

Vs.

Babu Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. Malkeet Singh, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 28.08.2014 (Annexure P-5) passed by the learned trial Court, dismissing the application under Order 7 Rule 11 of the Code of Civil Procedure (for short 'CPC'), seeking rejection of the plaint, defendants have approached this Court by way of present civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare perusal of the impugned order would show that the only ground taken in the application under Order 7 Rule 11 CPC by the defendants-petitioners was that an earlier suit was decided qua this very property, because

of which the instant suit would be hit by principle of res-judicata. However, perusal of the operative part of the impugned order would show that the learned trial Court recorded that plaintiff was not party to the earlier suit, because of which the earlier civil Court decree cannot be held binding against the plaintiff.

Once the plaintiff-respondent was not party to the earlier suit, instant plaint shall not be hit by the principle of res-judicata. Further, it would be a question of law and fact, which will be decided by the learned trial Court at the appropriate stage, after appreciation of the evidence to be brought on record by the parties. Having said that, this Court feels no hesitation to conclude that the learned trial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Bhau Ram Vs. Janak Singh and others, 2012 (4) RCR (Civil) 571.**

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order passed by the learned trial Court, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order passed by the learned trial Court has been found based on sound reasons, which deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that the present revision petitions is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

However, since the suit is pending for the last more than five years, the learned trial Court is directed to make an endeavour to decide the suit expeditiously.

Resultantly, with the abovesaid observations made and directions issued, instant revision petition stands disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

22.08.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No