

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 3098-2016 (O&M)

Date of decision: 19.04.2018

Nirmal Singh and others

.....Petitioners

versus

Bhim Dev Singh and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.H.P.S.Ghuman, Advocate for the petitioners
Mr.J.S.Lali, Advocate for respondent no.2(a & b)
Mr.G.S.Punia, Senior Advocate with
Ms.Harveen Kaur, Advocate for respondent nos.9 to 17

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

Impugned in the present revision petition is the order dated 20.10.2015, passed by learned Civil Judge (Senior Division), Nabha, vide which, suit of the plaintiffs was dismissed being barred by the principles of res judicata.

Brief facts of the case are that present petitioners had filed a civil suit for possession, rendition of accounts and for permanent injunction. On appearance, defendant nos.1, 2, 4 to 9 and 12 filed an application under Order VII Rule 11 CPC for dismissing the suit on the ground that it is barred under Section 11 CPC by the principles of res judicata.

The trial Court after considering the said application dismissed the suit of the plaintiffs holding that matter in question has already been decided by the Hon'ble Supreme Court.

I have heard learned counsel for both the parties and have also carefully gone through the file.

The first question will arise as to whether the impugned order is revisable order or appellable order.

The perusal of the impugned order shows that in this case written statement was not filed. The Court after considering the plaint and the application filed by the defendant nos.1, 2, 4 to 9 and 12 dismissed the suit. Apparently, though the word has been used that the suit has been dismissed, it amounts to rejection of the plaint.

Since, plaint has been rejected after considering the facts mentioned therein and same amounts to deemed decree under Section 2(2) CPC, therefore, against the said order, only appeal lies.

Now, further question would arise, as to whether the present petitioner should be pushed to file fresh appeal.

I am of the view that in order to ensure speedy justice between the parties, present revision can be ordered to be treated as appeal and transfer to the appellate Court for decision. As such, the present revision petition is ordered to be treated as first appeal and the file is ordered to be transferred to the Court of District Judge, Patiala with a direction to treat it as a first appeal against the decree. The District Judge, Patiala may retain the file himself or entrust the same to any other Additional District Judge. It is expected that the matter will be decided expeditiously.

Revision petition stands disposed of accordingly.

Both the parties are directed to appear before the Court of District Judge, Patiala on 15.5.2018 at 10.00 AM.

19.04.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
No