

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

CR-5943 of 2017

Date of decision : 14.5.2018

Ved Pal

..... Petitioner

VERSUS

Vijay Pal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Bikram Chaudhary, Advocate for the
petitioner.

Mr.Abhinav Sood, Advocate for Mr.Vikram Singh,
Advocate for respondent Nos.1 to 4.

AMIT RAWAL, J.

The present revision petition is directed against the order dated 12.1.2017 whereby an application moved by the petitioner-defendant, at the stage of evidence, for rejection of the plaint on the premise that it was hit by the provisions of Order 2 Rule 2 CPC has been dismissed.

Mr.Bikram Chaudhary, learned counsel appearing for the petitioner submitted that the respondent-plaintiff, prior to the filing of the suit, claiming declaration and possession of the suit property, had earlier filed a suit for permanent injunction against the petitioner. The relief sought in the present suit could be availed in the previous suit and, therefore, the provisions of Order 2 Rule 2 CPC are

directly applicable but the Court below has rejected the plea by giving a finding on merits.

Mr. Abhinav Sood, learned counsel appearing for the respondents submitted that the previous suit was for a simplicitor injunction which was always based upon recurring cause of action and, therefore, the present suit is not barred by the provisions of Order 2 Rule 2 CPC.

I have heard learned counsel for the parties and appraised the paper book and am of the view that the matter with regard to maintainability should be kept open which can be seen/decided at the final stage. The issue which is a legal one can always be seen either in the previous plaint or in the present plaint and for that, documentary evidence is not required. For the aforementioned reasons, I am of the view that the trial Court should keep open the issue with regard to maintainability of the suit. As far as the question of applicability of the provisions of Order 2 Rule 2 CPC is concerned it is already brought on record and that issue shall be decided at the final stage while adjudicating the suit on merits.

In view of the aforesaid discussion, the present revision petition is disposed of.

May 14, 2018
KD

(AMIT RAWAL)
JUDGE

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes / No