

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7987 of 2017 (O&M)
Date of Order:08.01.2018

Rakesh Kumar

.Petitioner

Versus

Rani and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pranav Hooda, Advocate, for
Mr. Anirudh Singh, Advocate
for the petitioner

ANIL KSHETARPAL, J (Oral)

Defendant-petitioner is in revision petition against the order dated 25.07.2017, keeping decision on the preliminary issue pending till parties have led their evidence.

Defendant-petitioner is praying that the suit be dismissed on the ground that the plaintiff has failed to seek further relief of possession under Section 34 of the Specific Relief Act.

Learned trial Court had framed a preliminary issue, which is extracted as under:-

“Whether the suit of the plaintiff is maintainable in the present form?OPP”

However, while hearing the arguments, learned Court felt that the preliminary issue cannot be decided unless the parties are granted opportunity to lead their evidence and it is not possible to decide the suit at the initial stage.

I have heard learned counsel for the petitioner at length and

with his able assistance gone through the documents filed.

It is not in dispute that the parties have not been granted opportunity to lead evidence. It is positive case of the plaintiff that they are in possession of the property, whereas on the other hand, it is the case of the defendant that he is in possession and as such the suit is liable to be dismissed being not maintainable under Section 34 of the Specific Relief Act.

Taking into consideration the dispute between the parties, such issue can only be decided after granting opportunity to the parties to lead their respective evidence. In fact this issue could not be treated as a preliminary issue.

Keeping in view the aforesaid facts, there is no error in the order passed by the learned trial Court.

The revision petition is dismissed.

January 08, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No