

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

**Civil Revision No.178 of 2017
Date of Decision: 29.01.2019**

Ram Niwas

.....Petitioner

Vs

Satish Kumar

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Abhinav Aggarwal, Advocate
for the petitioner.

Mr. Shilak Ram Hooda, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. The present revision petition has been preferred by the petitioner against the order dated 13.12.2016 passed by the Civil Judge (Jr. Divn.) Sonipat, vide which application filed by the defendant/petitioner under Order 14 Rule 2 CPC was dismissed.

[2]. Perusal of the record would show that a civil Court decree dated 21.08.1993 was passed in favour of the petitioner in a Civil Suit No.400/1993 titled '*Ram Niwas vs. Sri Chand*' thereby declaring the present petitioner owner in possession of

plot in Prabhu Nagar, Mandi Sonipat. Vide civil Court decree dated 10.05.1985 passed in a civil Suit No.463/85, plot measuring 43½ x 39' situated within municipal limit of Sonipat was decreed in favour of Kailash Chand son of Siri Chand in a suit titled '*Kailash Chand vs. Siri Chand*'. The properties involved in the aforesaid two civil Court decrees were different properties and father of the parties gave the same to his two sons.

[3]. Petitioner filed Civil Suit No.327-RBT of 2012 dated 09.01.2012 for declaration and permanent injunction against the respondent challenging the sale deed dated 16.09.2011. Father of the petitioner Sri Chand died on 13.12.2011. The sale deed was set aside vide judgment and decree dated 14.12.2015. In the aforesaid suit, the defendant also alleged that the civil court decree dated 21.08.1993 was an act of fraud upon Sri Chand which was played upon the petitioner. Defendant alleged that father of the parties had not relinquished all his rights with possession in favour of Ram Niwas (petitioner) as per family settlement in the year 1991. Respondent denied that the plaintiff had obtained the judgment and decree dated 21.08.1993. In the defence set up by the present respondent in the aforesaid suit, the said decree dated 21.08.1993 was claimed to be illegal without setting up any counter claim in the said suit, nor any

cross suit has been filed. In the aforesaid suit, issues No.1 and 2 were framed to the following effect:-

- “1. *Whether the plaintiff is entitled for the relief of declaration to the effect that the sale deed bearing no.12898 dated 16.09.2011 is illegal, null and void being based upon fraud and is not binding upon the rights of the plaintiff who became owner in possession of the said property by way of civil court decree dated 21.8.1993, as prayed for? OPP*
2. *If issue no.1 is proved then “Whether the plaintiff is entitled for the relief of permanent injunction restraining the defendant from selling, alienating or creating any third party interest in the suit property and from dispossessing the plaintiff? OPP”*

[4]. The operative part of the judgment and decree dated 14.12.2015 reads as under:-

“It is ordered that the suit of the plaintiff is hereby decreed with costs to the effect that the impugned sale deed no.12898 dated 16.9.2011 is illegal, null and void and not binding upon the rights of the plaintiff, who has become owner in possession of the suit property by way of a valid civil court decree dated 21.8.1993. The defendant is further restrained from selling or alienating in any manner in favour of a third party, the suit property and from dispossessing the plaintiff therefrom.”

[5]. Evidently, sale deed No.12898 dated 16.09.2011 was declared to be illegal and not binding upon rights of the plaintiff, who had become owner in possession of the suit land by way of valid civil Court decree dated 21.08.1993. The decree dated 21.08.1993 was held to be valid in the aforesaid civil suit against

which a Civil Appeal No.9 of 2016 titled '*Satish Kumar vs. Ram Niwas*' is pending in the Court at Sonipat and the same is fixed for 05.03.2019 for arguments.

[6]. Civil Appeal No.9 of 2016 titled '*Satish Kumar vs. Ram Niwas*' challenging the civil court decree dated 14.12.2015 in favour of the petitioner is also pending. In an independent civil Suit No.12 dated 03.02.2012 at the instance of the defendant challenging the civil court decree dated 21.08.1993, an application under Order 14 Rule 2 CPC was filed by the petitioner for deciding the issue of maintainability as preliminary issue. The said application has been dismissed by the trial Court vide the impugned order on the premise that earlier an application under Order 7 Rule 11 CPC was filed by the petitioner and the same was dismissed on 16.03.2016. The said application was dismissed after holding that principle of *res judicata* is a mixed question of law and fact and the same can only be determined after leading of evidence by the parties. Thereafter issues were framed on 19.03.2016 and the case was fixed for evidence of the plaintiff. The application came to be filed by the petitioner thereafter when number of dates have already been gone by. Plaintiff's evidence have already been concluded and the case is fixed for defendant's evidence. The Court has also found that the triable issues are involved in the

present suit.

[7]. Under Order 14 Rule 2 CPC, the Court is required to pronounce judgment on all the issues. Under Order 14 Rule 2(i) CPC, the Court is required to pronounce judgment on all the issues notwithstanding that a case may be disposed of on preliminary issue. The Court shall subject to provisions of sub-Rule(2) pronounce judgment on all the issues. Where issues of law and facts arise in the suit and the Court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may try that issue first, if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues and until after that issue has been determined, and may deal with the suit in accordance with decision of that issue. Issue of maintainability in the present context is also dependent upon leading of evidence by both the parties.

[8]. Plaintiff has already concluded his evidence. The grounds taken by the petitioner under Order 7 Rule 11 CPC was on the basis of *res judicata* based on decision dated 14.12.2015 against which appeal is pending. Since the aforesaid issue was not treated to be sufficient for invoking powers of the Court under Order 7 Rule 11 CPC, the issue of maintainability cannot

be decided without leading of evidence by the parties at the trial. The issue cannot be treated to be preliminary issue in the light of observations made by the trial Court in the order dated 16.03.2016 vide which the application under Order 7 Rule 11 CPC was dismissed. Since issue of *res judicata* was held to be mixed question of law and facts, therefore, plea based on validity of civil court decree dated 21.08.1993 in favour of the petitioner on the basis of decision dated 14.12.2015 would also require evidence to be led by the parties. Plaintiff has already concluded his evidence. Preliminary issues are triable before the proceedings are treated as full fledged suit under order of the Court. Such a matter has to be left to the discretion of the Court.

[9]. The discretion exercised by the trial Court appears to be based on lawful consideration of the matter, where the application filed by the defendant/petitioner under Order 7 Rule 11 CPC had already been dismissed on 16.03.2016 and the same had attained finality. The plea of *res judicata* as involved in the aforesaid application was negated being mixed question of law and fact for consideration of the same under the scope of Order 7 Rule 11 CPC. As per requirements of the Order 14 Rule 2 CPC, the said plea can only be decided on the strength of evidence on triable issues which were framed on 19.03.2016

and thereafter plaintiff has already concluded his evidence.

[10]. In the light of above facts, no indulgence can be granted in this revision petition as the same is found to be devoid of merits. This revision petition is accordingly dismissed. However in view of facts and circumstances of the case, petitioner would be entitled to press for early disposal of the Civil Appeal No.9 of 2016 titled '*Satish Kumar vs. Ram Niwas*' which is pending in the Court of Addl. District Judge, Sonipat for 05.03.2019. Since the defendant's evidence is in progress in the suit of which present revision petition has arisen, therefore, the trial Court shall make every positive endeavour to decide the suit at the earliest by giving short adjournments.

January 29, 2019

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No