

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

**CR No.2787 of 2017(O&M)
Date of Decision: 20.08.2019**

Amrik Singh Walia

.....Petitioner

Versus

Narinder Kumar and another

.....Respondents

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

Present:Mr. Rajinder Goyal, Advocate
for the petitioner.

Ms. Deepali Puri, Advocate
for respondent No.1.

Mr. Tarun Seth, Advocate for
Mr. Sumi Jain, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.(Oral)

[1]. Earlier a suit for permanent injunction was filed. The trial Court dismissed the suit by holding that the same was not maintainable and the plaintiff/respondent No.1 had no locus standi, nor had any cause of action to file the suit in question. Municipal Council was not party to the said suit, rather under issue No.4, it was held that the Municipal Council was not necessary party to the suit in view of relief claimed.

[2]. Since no declaration was sought by the plaintiff, nor any relief was claimed against the Municipal Council, therefore, Municipal Council was not held to be necessary and proper party to the suit.

[3]. In a subsequent suit for mandatory injunction, the plaintiff has impleaded Municipal Council and sought direction against it to demolish the illegal and unlawful construction raised by defendant No.2 over the suit land. The illegal construction was claimed to be in violation of sanctioned site plan issued by the Municipal Council.

[4]. The cause of action for filing the subsequent suit would depend upon multiple questions. Cause of action depends upon bundle of facts. Cause of action is a mixed question of law and facts and the same requires leading of some evidence.

[5]. At the stage of consideration of application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. Pleadings of the earlier suit with reference to judgment and decree and orders passed in appeal and in RSA are required to be proved by leading evidence. If the pleadings of the subsequent suit have created some illusion on account of clever drafting by the plaintiff, it should be nipped in the bud at the first date of hearing by examining the parties under Order 10 CPC.

[6]. Subject to aforesaid liberty in favour of the petitioner, I

find no justification to interfere in the impugned order.

[7]. Disposed of.

20.08.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No