

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

Sr. No.106

CR No.5679 of 2018

Date of decision: 30.09.2019

Kulwant Singh

....Petitioner

versus

Gurmeet Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Hemender Goswami, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 01.08.2018 passed by the Civil Judge (Junior Division) Ludhiana (for short – the Trial Court) dismissing an application filed by the petitioner to treat the issue with regard to the respondent's suit being barred by Order 2 Rule 2 CPC as a preliminary issue.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein possession by way of specific performance of affidavit/agreement dated 21.05.2014 with regard to land measuring 1 killa detailed and described in the head note of the plaint (for short – the suit property). In the alternative recovery of Rs.20,00,000/- alongwith interest was sought. Compensation for committing breach of contract was also claimed. The petitioner was further sought to be restrained from selling, alienating, transferring or mortgaging the suit property to any third person.

On being put to notice, the petitioner, who was the defendant in the suit, appeared before the Trial Court and filed an application under Order 7 Rule 11 read with Order 2 Rule 2 CPC seeking rejection of the respondent's plaint on the ground that in an earlier suit filed by the respondent, he had relinquished his right qua the agreement dated 21.05.2014 which now formed the basis of his present suit. The Trial Court dismissed the petitioner's application on 01.03.2018 against which he filed a revision petition before this Court being **CR No.2209 of 2018 – Kulwant Singh vs. Gurmeet Singh**, which petition was disposed of on 04.04.2018 by passing of the following order:-

“After arguing for some time, learned counsel for the petitioner seeks liberty of this Court for withdrawal of the present revision petition with liberty to the petitioner to move an appropriate application after framing of issues by treating the issues, if framed under Order 2 Rule 2 CPC to be preliminary.

Ordered accordingly.”

In terms of the aforesaid liberty granted by this Court, the petitioner filed an application before the Trial Court seeking therein to treat the issue that the respondent's suit was barred under Order 2 Rule 2 CPC as a preliminary issue. The Trial Court dismissed the application. Such order of the Trial Court is under challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

The petitioner's application to treat the issue whether the respondent's suit was barred under Order 2 Rule 2 CPC as a preliminary issue has been dismissed by the Trial Court on the ground that such issue can be decided only after both parties have led evidence as the same is a

mixed question of law and facts. Such view of the Trial Court is considered and affirmed.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 30, 2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No