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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
10/4/2019 12:04
I attest to the accuracy and
authenticity of this document

CR-2672-2019 (O/M)
Date of decision : 25.4.2019

Gurbakshish Gill Petitioner (s)

Versus

Birjinder Singh and others Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Petitioner in person.

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KULDIP SINGH, J. (ORAL)

Petitioner, who is defendant No. 3 before trial Court, is aggrieved by order dated 11.9.2018 (Annexure-P-11), passed by learned Additional Civil Judge (Senior Division), Moga, vide which his application to summarily dismissed suit being abuse of process of Court, has been dismissed.

Briefly stated that plaintiff (respondent No. 1) had filed a suit that he is in possession of 1/4th share in suit property. He has also sought permanent injunction against defendants. In the application, defendant No. 3 (petitioner) claimed that matter has already been decided by Civil Court and re-litigation of same is abuse of process of Court.

Heard.

I am of the view that when a civil suit is filed, plaintiff can only be rejected only on the ground provided under Order VII Rule 11 CPC, 1908. If petitioner claimed that suit is barred by principle of res judicata, he can always raise such pleas in written statement and it is for trial Court to decide it, after appreciating evidence whether said principle is attracted or not. Petitioner (defendant No. 3) can also seek

compensatory costs for frivolous litigation. However, petitioner relies upon authority of Hon'ble Supreme Court of India in K.K. Modi Versus K.N. Modi and others, arising out of Civil Appeal No. 613 of 1998.

I am of view that in view of fact that no application was filed under Order VII Rule 11 CPC, 1908, and trial Court is yet to take a decision after going through pleading of both parties whether plaint is liable to be rejected. The suit could not be dismissed in the way sought by petitioner. Revision is dismissed with liberty to petitioner to raise all available pleas in written statement and press for framing specific issues in this regard and get decision on same.

(KULDIP SINGH)
JUDGE

25.4.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No