IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.946 of 2019 (O&M)
Date of decision : 08.02.2019

Shri Vinit Kashyap and others

...Petitioners

Versus

Sh. Narain and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S. Kohli, Advocate for the petitioners.

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ANIL KSHETARPAL, J. (ORAL)

Initially, the defendants filed an application under Order 7 Rule 11 CPC which was dismissed by the trial Court. Order was challenged in this Court and the Court was directed to frame three preliminary issues and decide them. The preliminary issues were on non-maintainability of suit under Order 2 Rule 2 CPC, limitation and the jurisdiction of the Court.

Apart from issue with regard to limitation, the issue of Order 2 Rule 2 CPC and the jurisdiction, has been answered against the defendants. That is how the defendants-petitioners are in the present revision petition.

The plea of Order 2 Rule 2 CPC is to be proved by leading evidence. Still further, the plea of Order 2 Rule 2 CPC stems out from cause of action. A look at the plaint in the previous suit, it is not clear that when the cause of action accrued for filing the suit for injunction. The trial of the case has already started and made some progress. In such circumstances, it

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would be better if the trial Court is requested to re-decide these two issues i.e. Order 2 Rule 2 CPC and the jurisdiction, once again without being influenced by the order which has been passed while rejecting the claim of the defendants.

This order has been passed because if a notice is issued in the revision petition, it would delay the trial of the suit which is pending for almost five years.

Keeping in view the aforesaid facts and circumstances of the present case, learned trial Court is requested to proceed with the trial and re-decide the issues which have already been decided i.e. Order 2 Rule 2 CPC and the jurisdiction without being influenced by order which has been passed on 04.10.2018.

Since the order has been passed without hearing the respondents, therefore, they shall be at liberty to move an application for recall, if they feel aggrieved.

In view of what has been observed above, the present revision petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

08.02.2019 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**

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