

110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8161-2017 (O&M)
Date of Decision: 04.02.2020

Suresh Kumar

.... Petitioner

Versus

Om Parkash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Alok Jain, Advocate
for the petitioner.

...

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-petitioner has filed the present Revision Petition against two orders. One is of dated 01.09.2017 by which the Court ordered issue No.5 to be treated as preliminary issue. By another order dated 02.11.2017, the opportunity to lead evidence in defence of the issue has been closed.

Learned counsel for the petitioner contends that issue of res judicata could not be treated as preliminary issue as it would require evidence. He has further submitted that once issue No.5 was treated as preliminary issue, the Court erred in fixing the suit for plaintiff's evidence particularly when the onus to prove issue No. 5 was defendant.

This Court has considered submissions. Learned trial Court in its discretion, keeping in view the facts of the case, has considered it appropriate to treat Issue No. 5 as preliminary issue. The plaintiff has failed to show any prejudice caused.

As regards second argument of learned counsel for the petitioner-

plaintiff, once the onus to prove issue No.5 was on the defendant, it was

incumbent to the trial Court to call upon the defendant to lead evidence in support thereof. It was only, thereafter, the plaintiff could be called upon to lead evidence in defence to issue No.5.

Keeping in view the aforesaid facts, with the aforesaid modification, the present Civil Revision is disposed of.

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

(ANIL KSHETARPAL)
Judge

04.02.2020
Pardeep

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No