

CR-2723-2020 (O&M)

Date of Decision: February 22, 2021

Sadhu Ram

.....Petitioner

versus

Balbir Singh and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTALPresent: Mr. Krishan Kumar Chahal, Advocate
for the petitioner.**Sudhir Mittal, J. (Oral)****CM-1846-CII-2021**

This application has been filed for placing on record Annexures P-4 to P-6 as well as for exemption from filing certified and true typed copies thereof.

For the reasons stated therein, application is allowed and exemption sought for is granted. Annexures P-4 to P-6 are taken on record.

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The petitioner is aggrieved by order dated 21.09.2020 (Annexure P-3), whereby his application under Order 7 Rule 11 CPC for rejection of the plaint has been dismissed.

The respondents are the plaintiffs in the suit. They have challenged partition proceedings on the ground of violation of principle of natural justice. In the application under Order 7 Rule 11 CPC, bar of jurisdiction has been pleaded in view of Section 158 of the Punjab Land Revenue Act, 1887. It has also been pleaded that the suit is barred by the principle of *res judicata*.

The learned trial Court has rejected the application on the ground that in case partition proceedings are challenged on the ground of violation of principle of natural justice, the jurisdiction of the Civil Court cannot be said to be barred and, thus, Section 158 of Punjab Land Revenue Act, 1887 is not applicable.

However, nothing has been mentioned regarding the bar of *res judicata*.

So far as the observations regarding Section 158 of Punjab Land Revenue Act, 1887 are concerned, the learned trial Court is correct in observing that proceedings can always be challenged in case violation of principle of natural justice is claimed. Section 158 of Punjab Land Revenue Act, 1887 bars the jurisdiction of the Civil Court in case a suit is filed for grant of relief, which can be provided by the Revenue Officers under the Punjab Land Revenue Act, 1887. That is not the case in the present suit.

Whether the suit is barred by principle of res judicata, is a mixed question of fact and law. Evidence has to be led by the defendant-petitioner to be successful and, thus, plaint cannot be rejected as being barred by law.

For the aforementioned reasons, the petition has no merit and is dismissed.

February 22, 2021
Poonam Negi

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No