

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

CR-2226-2022 (O&M)

Date of decision : 31.05.2022

Mukesh Kumar (since deceased) through LRs and Others

... Petitioner(s)

Versus

Om Parkash and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Puneet Bassi, Advocate for the petitioners.

ALKA SARIN, J. (ORAL)

CM-6921-CII-2022

This is an application for impleading the legal representatives of petitioner No.1, namely, Mukesh Kumar, who is stated to have died.

For the reasons stated in the application, the same is allowed and the legal representatives of petitioner No.1, namely, Mukesh Kumar, mentioned in para No.2 of the application are impleaded as a party.

CR-2226-2022

This is a civil revision petition under Article 227 of the Constitution of India for setting aside the the impugned order dated 18.08.2021 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Hansi dismissing the application dated 06.12.2017 filed by the defendant-petitioners under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC).

Brief facts relevant to the present *lis* are that the plaintiff-respondents filed a civil suit for declaration to the effect that the alleged compromise deed (Ex.C1), alleged map (Ex.C2) and the alleged judgment and decree dated 12.12.2015 passed in Civil Appeal No.721-CA of 30.05.2015 were against the facts and law and were forged and as result of conspiracy and misrepresentation. The defendant-petitioners filed an application under Order 7 Rule 11 CPC on the ground as mentioned in para 2 of the application, which reads as under :

“2. That the plaintiffs have filed suit for declaration in respect of such a property of which they are neither owners nor are in possession on the spot. Even they do not have any single document to show their prima facie title over the suit property. As such, they have no cause of action to file the present suit against the applicants.”

The said application was dismissed vide impugned order dated 18.08.2021 (Annexure P-1). Aggrieved by the said order, the present revision petition has been filed.

Learned counsel for the defendant-petitioners would contend that the suit was barred on the ground that in the suit the plaintiff-respondents have challenged the judgment and decree passed by the Additional District Judge in Civil Appeal No.721-CA of 30.05.2015 and the same cannot be done inasmuch as the Civil Judge cannot sit over an appeal decided by the Additional District Judge.

On a pointed query put by this Court as to where in the application under Order 7 Rule 11 CPC the said ground was raised, learned counsel has candidly admitted that no such ground was raised or argued before the Court below.

In view of the fact that no such ground was raised before the Court below, I do not find any illegality or infirmity in the impugned order dated 18.08.2021 (Annexure P-1). The present revision petition is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

31.05.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO