

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

109

**CR-1248 of 2019(O&M)
Date of Order: 10.05.2022**

Resham Singh (now deceased) through LRs

..Petitioner(s)

Versus

Palwinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S.Bedi, Advocate, for the petitioner(s)

Mr. Kanwaljit Singh, Sr. Advocate, with
Ms. Shazia K. Singh, Advocate and
Mr. Ajaivir Singh, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

The petitioner herein is plaintiff no.1 in a suit filed for grant of decree of declaration with a consequential relief of permanent injunction.

Defendant no.5 to 7 while filing the written statement have also filed a counter claim. It has been asserted that the present suit has been filed by the plaintiffs in collusion with defendant no.1 to 4. The application filed by the petitioner for rejection of the counter claim under Order 7 Rule 11 CPC has been dismissed. The aforesaid order has been challenged in the revision petition.

The learned counsel representing the petitioner contends that a previous suit filed by the defendant no.5 to 7 was dismissed in default. He further contends that in the counter claim, the relief cannot be sought against co-defendants.

Per contra, the learned counsel representing the counter claimants submits that defendant no.5 to 7 have sought the main relief against the plaintiff only which, of course, incidentally covers/affects defendant no.1 to 4.

At the stage of Order 7 Rule 11 CPC, the Court is required to examine the assertions made in the plaint. In the present case, the counter claim is the plaint filed by defendant no.5 to 7. They have specifically pleaded that the suit has been filed by the plaintiff in collusion with defendant no.1 to 4, who are trying to dispossess the counter claimants. Furthermore, it has nowhere come in the pleadings as to what was the cause of action for filing the previous suit which was dismissed in default. Hence, at this stage, it would not be appropriate to reject the counter claim under Order 7 Rule 11 CPC.

Needless to observe that the plaintiff shall be entitled to take this objection which shall be adjudicated by the Court while deciding the suit.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

May 10, 2022

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(ANIL KSHETARPAL)
JUDGE

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