

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 6274 of 2023(O&M)
Date of Decision: 18.10.2023

Rai Singh

...Petitioner

Versus

Ranjit Singh & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Mithul Singh Rana, Advocate
For the petitioner.

KARAMJIT SINGH, J.

1. The present petitioner has been filed by the petitioner/defendant for setting aside the order dated 05.11.2022 passed by the Court of learned Civil Judge (Jr.Divn.), Mukerian, District Hoshiarpur whereby the application filed by the petitioner under Order 7 Rule 11 CPC was dismissed in Civil Suit No. 409 of 2015 titled as Ranjit Singh Vs. Saroop Singh & Ors.

2. The counsel for the petitioner while assailing the impugned order has, *inter alia*, contended that the suit filed by respondent No.1/plaintiff is barred by principle of *res judicata* as the subject matter involved in the suit was also involved in the previous suit having No. 52 of 1986 which was decided on 22.12.1986 by the Court of Additional Civil Judge (Sr.Divn.), Dasuya and the said judgment has already attained finality. The counsel for the petitioner further submits that the petitioner filed an

application under Order 7 Rule 11 CPC seeking rejection of the plaint in the present suit on the ground that the same is barred under Section 11 CPC being hit by principle of *res judicata*. The counsel for the petitioner further submits that the learned trial Court wrongly dismissed the said application without appreciating the settled factual and legal position. So, prayer is made that present petition be allowed and the plaint of civil suit titled Ranjit Singh Vs. Saroop Singh & Ors. be rejected.

3. I have considered the submissions made by counsel for the petitioner.

4. It is settled position of law that for the purpose of disposal of an application filed under Order 7 Rule 11 CPC, the Court can only consider the averments made in the plaint and at most the documents produced along with the plaint. While dealing with such an application the defence taken by the defendant cannot be considered by the Court concerned. The Hon'ble Apex Court in Civil Appeal No. 5841 of 2023 (Keshav Sood Vs. Kirti Pradeep Sood & Ors.) decided on 12.09.2023 has held that the issue of *res judicata* requires a detailed examination of various elements, including the pleadings in the previous suit and the issues involved in the previous litigation and the judgments passed by the trial Court and the Appellate Courts in the said earlier litigation. In order to prove the plea of *res judicata*, it requires to be substantiated by producing the copies of the pleadings, issues and judgment in the previous litigation and as such the question of *res judicata* cannot be decided simply by going through the averments made in the plaint.

5. In light of the above discussion, this Court is of the view that there is no illegality or perversity in the impugned order dated 05.11.2022

whereby the application filed by the petitioner under Order 7 Rule 11 CPC was dismissed. Consequently, the present petition is dismissed being devoid of merits.

18.10.2023

Jiten

(KARAMJIT SINGH)
JUDGE

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