

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

2024:PHHC:052693

CR-9110-2017 (O&M)
Date of decision: 19.04.2024

GURBAKSHISH GILL ..Petitioner

Versus

BIRJINDER SINGH AND ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Sh. Gurbakshish Gill (petitioner)
in person.

Mr. Damanjit Singh Sandhu, Advocate
for respondents

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is the plaintiff in a pending suit filed for grant of decree of declaration in which counter claim has also been filed. The defendant filed an application under Order XIV of the Code of Civil Procedure, 1908, to treat his objection with regard to the *res judicata* and the suit having been filed beyond the period of limitation, as preliminary issue, which has been dismissed by the trial Court.
2. This Bench has heard the petitioner, who appears in person and the learned counsel representing the respondent.
3. The scope of the Court to cull out preliminary issue whether the suit is barred by *res judicata*, has been considered by the Supreme Court in *Sathyanath and another Vs. Sarojmani, (2022) 7 SCC 64.* The High Court's order directing the trial Court to settle preliminary issue with regard to the plea of *res judicata* has been reversed. It has been held that the provisions of Order XIV Rule 2 of the Code of Civil Procedure, 1908, which operate all the procedural law and Order XIV Rule 2 does not envisage

framing of preliminary issue on the plea of *res judicata* particularly

when it will lead to multiple trials in one suit. Similarly, the question as to whether the suit is filed beyond the period of limitation is also a mis-question of fact and law, which cannot be decided summarily.

- 4. Keeping in view the aforesaid position, this Court does not find it appropriate to interfere.
- 5. Dismissed accordingly.
- 6. All the pending miscellaneous applications, if any, are also disposed of.

April 19th, 2024
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(ANIL KSHETARPAL)
JUDGE

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