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In the High Court of Judicature for Rajasthan
At Jaipur Bench, Jaipur

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In

S.B. Civil Revision Petition No.107/2009
Hari Shankar Sharma Vs. Banshidhar Sharma

Date Of Order :: 30th September, 2009

Hon'ble Mr. Justice Jitendra Ray Goyal

Mr. Arvind Gupta, for appellant.

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By the Court :-

Heard learned counsel for the petitioner-defendant on the point of admission of this civil revision petition filed under section 115 of the Code of Civil Procedure (in short CPC) against the order dated 18/9/2009 passed by Additional District Judge (Fast Track) No.2, Jaipur City, Jaipur by which the application filed by the petitioner-defendant under Order 7 Rule 11 CPC in Civil Suit No.31/2009 has been rejected.

2. Learned counsel for the petitioner contended that respondent-plaintiff filed second suit in regard to disputed property just to harass the petitioner-defendant. It was then submitted that the petitioner-defendant had taken specific plea in earlier suit that two rooms along with the kitchen etc. were with him since long which was filed by the respondent-plaintiff only in regard to one room and the

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decree passed in that suit in favour of the plaintiff-respondent has been challenged by the petitioner and first appeal is pending before this Court. It was further submitted that without properly considering the facts and the provisions of law, the trial court has dismissed the application filed under Order 7 Rule 11 CPC and further directed to file written statement, which is not lawful in the eye of law. Reliance was placed upon the judgment delivered in the case of **Sajjan Sikaria and others Vs. Shakuntala Devi Mishra and others**, reported in **(2005) 13 Supreme Court Cases 687**.

3. I have considered the above submissions in the light of the impugned order and other material available on the record. It is admitted case of the petitioner-defendant that earlier suit filed by the respondent-plaintiff against the petitioner-defendant was only in regard to one room which is not a subject matter of the present suit. It is true that defendant might have taken the plea that two rooms were in his possession but in that suit even according to the petitioner, decree has been passed by the trial court in regard to one room which was subject matter of that suit. The trial court has considered the application filed by the petitioner-defendant under Order 7 Rule 11 CPC and dismissed the same on the ground that alleged facts are mixed questions of law and facts which can be decided only after framing the issues. I do not find any infirmity in the impugned order

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passed by the court below. So far the judgment in **Sajjan's case (supra)** cited by the counsel for the petitioner-defendant is concerned, it has no application in the facts and circumstances of the present matter since in that case it has been directed that after filing written statement application under Order 7 Rule 11 CPC be considered as preliminary issue but in the instant case the application itself was dismissed and thereafter defendant-petitioner was directed to file written statement for further progress in the suit. In view of the above, there is no merit in this revision petition and the same is liable to be dismissed at the admission stage.

4. Consequently, this civil revision petition along with stay application is dismissed at the admission stage.

(J.R. Goyal),J.

**VS Shekhawat/-
Jr. P.A.
D2**