

**RSA-1432-1992 (O&M)****-1-****203****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-1432-1992 (O&M)
Reserved on: 13.08.2025
Pronounced on: 19.08.2025**

Murti Thakurji Maharaj and Others

.....Appellants

VERSUS

Babu Lal & Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Anil Shukla, Advocate for the appellant.

Respondent No.1-contesting respondent ex-parte.

Respondent Nos. 2 to 5 non-contesting and were
ex-parte before the trial Court.**MANDEEP PANNU, J**

1. The present Regular Second Appeal has been preferred by the appellant/plaintiff Murti Thakur Ji, through Rajinder Das, against the impugned judgment and decree dated 12.12.1991 passed by the learned Additional District Judge, whereby the appeal filed by Babu Lal was accepted by the lower Appellate Court after setting aside the findings recorded by the learned trial Court, which had originally decreed the suit in favour of the plaintiffs vide judgment and decree dated 07.03.1987.

Brief Facts

2. The plaintiffs had filed a suit for declaration to the effect that the owner of the suit property was Murti Thakur Ji Maharaj, and that plaintiff No.1, Rajinder Das, was the Mohtmim of the temple. Plaintiffs No. 2 to 8 were stated to be the legal representatives of deceased Mahant Ram Das. The plaintiffs also

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sought that mutation dated 20.06.1983 was illegal and void, and liable to be set aside. In the alternative, the plaintiffs prayed for permanent injunction restraining the defendants from interfering in their possession over the property in question. They also sought possession in case the defendants were found to be in possession.

3. It was the case of the plaintiffs that the defendants, in collusion with the revenue authorities, got entered the impugned mutation in their favour, which was illegal and void. It was further pleaded that during the lifetime of Mahant Ram Das, he had appointed Rajinder Das as his Chela and a formal ceremony was held in this regard. Ever since then, Rajinder Das had been performing the duties of Mohtmim. The defendants were repeatedly requested to acknowledge this position but without success.

4. The defendants contested the suit by denying the plaintiffs' assertions. It was pleaded that Ram Das was not the Mohtmim of Murti Thakur Ji Maharaj, nor did he have any concern with the suit property. According to them, it was Mahant Nageshwar Das who was the Mohtmim of the temple and during his lifetime, the defendant had been adopted as his Chela. It was further contended that the mutations were not entered behind the back of the plaintiffs but were duly attested in the presence of persons concerned. The defendants also denied that Rajinder Das had ever been adopted as Chela of Ram Das. They pointed out that a civil suit had earlier been decided between Rajinder Das and them on 10.09.1975, which barred the present suit by the principle of res judicata. The defendants further pleaded that the suit was time-barred, and that the plaintiffs had no locus standi to maintain the same.

5. Replication to the written statement was filed by the plaintiffs.

6. Following issues were framed:-

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1. Whether the plaintiffs are owners in possession of the disputed property as Mohatmims as alleged?OPP
 2. Whether the plaintiffs are entitled to the injunction prayed for? OPP
 3. Whether the plaintiff No.1 Rajender Dass is the Chela of Ram Dass? OPP
 4. Whether the impugned mutation No.745, 525 and 991 are not binding on the plaintiffs as alleged? OPP
 5. Whether the suit is barred by limitation? OPD
 6. Whether the plaintiffs have no locus-standi to file the suit? OPD
 7. Whether the suit is barred by principle of res-judicata? OPD
 8. Whether the suit is not maintainable in the present form?OPD
 9. Whether the defendants are entitled to the special costs? OPD
 10. Whether the defendant No.1 is the Mohtmim of the Murti Thakurji Maharaj, as alleged? OPD
 11. Whether the plaintiffs are entitled to the possession of the property in dispute as alleged? OPD
 12. Relief.
7. Both sides led evidence in support of their respective stands.

Findings of the Trial Court

8. The learned trial Court, after appreciating the evidence on record, decreed the suit in favour of the plaintiffs. It was held that plaintiff Rajinder Das had in fact been appointed as Chela of Mahant Ram Das and, in that capacity, was the Mohtmim of Murti Thakur Ji Maharaj. The trial court thus recognized Rajinder

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Das as the owner of the suit property in his capacity as Mohtmim and decreed the plaintiffs' claim accordingly.

Findings of the Lower Appellate Court

9. Aggrieved by the judgment and decree dated 07.03.1987 of the trial Court, the defendant/appellant Babu Lal filed an appeal before the learned Additional District Judge, Narnaul. The lower Appellate Court, while accepting the appeal, framed the main issue as to "whether the present suit was barred by the principle of res judicata". Upon consideration of the matter, the learned lower Appellate Court observed that in the former suit filed by Sardara and Jahara, the learned Sub Judge had held Babu Lal to be the Mohtmim of the temple and not Rajinder Das. The appeal against that decision had been dismissed up to the High Court.

10. The lower Appellate Court further held that in the former suit, Rajinder Das had been a party and was represented through Jagdish as his next friend during his minority. He had been properly represented in that litigation. Therefore, the finding in the former suit operated as res judicata against him. On that reasoning, the lower Appellate Court set aside the decree of the trial court and dismissed the suit filed by the plaintiffs.

11. Aggrieved by the impugned judgment and decree dated 07.03.1987 passed by the lower Appellate Court, the plaintiffs preferred the present Regular Second Appeal. Notice was issued to the respondents but none appeared, and they were accordingly proceeded against ex parte. Learned counsel for the appellant/plaintiff has argued that the lower Appellate Court erred in holding that the suit was barred by res judicata. It was contended that in the earlier litigation,

Rajinder Das was a minor and was not properly represented, and that his interests

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had not been adequately safeguarded. It was further argued that the earlier judgment had been procured on the basis of forged documents allegedly prepared from the revenue authorities. In support of these submissions, reliance was placed on the judgment reported as *AIR 1960 Kerala 367, Narayanan Namburi and Others v. Gopalan Nayar and Others*.

Findings

12. The core question in this Regular Second Appeal is whether the findings of the learned lower Appellate Court, holding that the present suit is barred by the principle of res judicata, suffer from any legal infirmity. To understand its background of the former suit is to be seen. The record reveals that the former civil suit was instituted by Sardara and Jahara as plaintiffs against Murti Thakurji Maharaj through Rajinder Das (minor), Chela of Ram Das Chela Jamuna Das, through Jagdish as next friend (defendant No.1) and Babu Lal (defendant No.2). The property in dispute in the former suit is identical to the property involved in the present litigation i.e. Murti Thakurji Maharaj established Mandir Thakurji Maharaj at Morund. In the former suit, the following issue was framed as Issue No.2

“2. *Whether Rajinder Das and Babu Lal are the Mohtmims of the Mandir in dispute? OPP*”

13. The main contest in former suit was that, according to the plaintiffs defendant No.1 (Rajinder Das) was the Mohtmim of the Mandir Murti Thakur Ji Maharaj, whereas defendant No.2 (Babu Lal) denied this and asserted that he was the Mohtmim. Both defendants No.1 and 2 in former suit were jointly represented through their counsel.

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14. Learned trial Court after hearing learned counsel for the parties in the former suit, vide judgment dated 19.09.1975 held in favour of defendant No.2 (Babu Lal) declaring him to be the Mohtmim of the Mandir. This judgment attained finality after being upheld by the Hon'ble High Court.

15. In the present subsequent suit, the plaintiff is Rajinder Das, now major, suing as Chela of the deity Murti Thakur Ji Maharaj, claiming that he is the Mohtmim and in possession of the suit property. Babu Lal is again arrayed as a defendant. In nutshell, co-defendants of former suit are plaintiff and defendant in subsequent suit and litigating on the question of Mohtmim of the deity. The central dispute in both suits is thus identical as to who is the Mohtmim of the Mandir?

16. Now coming to the question of the applicability of res-judicata between co-defendants, although the plaintiffs in the former suit (Sardara and Jahara) are not parties in the subsequent suit, the defendants in the former suit are now arrayed as plaintiff and defendant in the subsequent suit. The principle of res judicata applies between co-defendants when the following condition are satisfied:-

- i) There is a conflict of interest between the co-defendants in the former suit.
- ii) The issue between them was directly and substantially the same.
- iii) The determination of that issue was necessary for the decision in the former suit.

17. This principle has been affirmed by the Hon'ble Supreme Court in

Civil Appeal No.8829 of 2010, decided on 08.07.2024 Har Narain Vs.

Cantonment Board, where it was held that *it is settled law that principle of res*

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judicata is applicable not only between the plaintiff and the defendants but also between the co-defendants.

18. In the present case, the inter se dispute between Rajinder Das and Babul Lal as to who is the Mohtmim of the Mandir was not only directly and substantially in issue in the former suit, but was also conclusively decided in favour of Babu Lal. The absence of Sardara and Jahara (plaintiffs in former suit) in the subsequent suit does not prevent the bar operating as between Rajinder and Babu Lal (co-defendant in former suit).

Submission of learned counsel for the appellant

19. Learned counsel for the appellants by taking plea of minority and improper representation contended that Rajinder Das was a minor in the former suit and was not properly represented and therefore, the principle of res judicata cannot be invoked against him. In support of his contention, he has relied upon a judgment of Hon'ble Kerala High Court in the case of *Narayanan Nambooripad and Others Vs. Gopalan Nair and Another [1960 AIR (Kerala) 367]*, wherein it has been held as under:-

“15. The right of the minor to avoid a decree obtained against him on account of the gross negligence of his guardian ad litem is substantive right. It is not a mere matter of procedure and does not depend on any rule of evidence. He cannot be prevented from enforcing the substantive right simply because this may cause loss or inconvenience to the plain tiff in the previous litigation. Section 44 of the Evidence Act also does not stand in the way. A substantive right cannot be defeated simply because gross negligence is not mentioned as one of the grounds of avoiding a judgment under Section 44

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Evidence Act. The provisions of Section 44 Evidence Act is permissive and not prohibitive.

20. I have heard considered this contention of learned counsel for the appellant and do not find any force in it.

21. The case law cited by learned counsel for the appellant is distinguishable from the facts and circumstances of the present case. There is no dispute to the settled propositions of law that it is the substantive right of minor to avoid decree obtained against him on the ground of gross negligence. However, for that matter proper course is to challenge that decree.

22. If Rajinder Das considered that he was not properly represented in the former suit, the proper course of action was to challenge the decree in that suit on the ground of improper representation which he has admittedly not done. He could not, in the present subsequent suit, indirectly challenge validity of the earlier decree by pleading improper representation as a defence to res judicata. Thus, this finding of learned lower Appellate Court is devoid of any force.

23. A minor cannot avoid the application of res judicata in a subsequent suit the ground that the earlier decision was erroneous or suffer from procedural defects, unless the earlier decree is set aside in appropriate proceedings.

Conclusion

24. In view of finding above, this Court comes to the conclusion that the controversy in both suits is identical, relating to the Mohtmimship of the Mandir. This issue has already been finally adjudicated in favour of Babu Lal in the former suit and the judgment therein stands affirmed upto the High Court.

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25. The plea of minority and improper representation cannot be entertained in the subsequent suit as a means to defeat the application of res judicata.

26. Consequently, while the reasoning of the learned lower Appellate Court may differ from that of this Court, its ultimate conclusion that the suit is barred by the principle of res judicata is correct and is accordingly affirmed. The appeal is dismissed. The judgment and decree of the learned lower Appellate Court is upheld.

27. No order as to costs.

28. Pending application(s), if any, also stand disposed of.

August 19, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No