

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1385 of 2014 (O&M)

Date of decision: 24.04.2015

Divya Dhody

... Petitioner

versus

Rajan Madhu

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Gurmeet Bindra, Advocate with
Ms. Madhu Dayal, Advocate, for the petitioner.

Ms. Munisha Gandhi, Senior Advocate, with
Mr. Gaurav Goel, Advocate for the respondent.

K.Kannan, J.

The revision petition is against the order dismissing an application for the appointment of Commissioner. Such a prayer by the petitioner had been already declined in an earlier application, and the Court therefore, held that the renewal of the same plea when the earlier order had become final cannot be entertained.

The inspiration for a fresh application was on the ground that in the cross-examination of the defendant by the plaintiff, the defendant stated that he had no objection if the property was demarcated by Commissioner. This is again reiterated by the counsel in the revision as a ground for interfering with the order of the Court below.

I would find that the principle of res judicata will also apply for interlocutory applications. The earlier application was dismissed on the ground that the property was stated to be a joint property between the plaintiff and the defendant among others and hence, the proper remedy cannot be for demarcation and the relief can be worked out only in a partition. In my view, any order passed at the interlocutory stage will also operate as res judicata for subsequent orders at the

subsequent stage of the litigation. It was held by Hon'ble the Supreme Court in Surjit Singh Vs. Gurwant Kaur, 2014 (4) RCR Civil 343:

“the principle of res judicata applies also as between two stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.”

It can be no argument that the defendant had no objection for such a course. The applicability of Section 11 Cr.P.C. does not depend on will of parties and, therefore, find the petition as not maintainable. I will find no reason to differ with the same.

It will be always open for a party who is aggrieved at the decision at the interlocutory stage to canvass for against the correctness of such decision in a regular appeal if the suit is ultimately decided against the party by virtue of provisions mentioned under Section 105 of the Civil Procedure Code. The order declining appointment of Commissioner was on a prima facie consideration that the property is held co-ownership and that only a relief of partition would be tenable. If this premise is found to be incorrect at the final adjudication, the Court may identify the area of encroachment, consistent with the finding that could be rendered. This can be done as a necessary exercise to give effect to the decree, if only the Court accepts the plaintiff's contention of exclusive ownership. As of now, I will not find any scope for interference with the order passed by the court bellow.

The civil revision petition is dismissed.

24.04.2015
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(K.KANNAN)
JUDGE