

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.7331 of 2011 (O&M)

Date of decision: 16.07.2015

Smt. Raj Bala

.... Petitioner

versus

Smt. Santosh Kumari alias Rani and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arvind Singh, Advocate,
for the petitioner.

Mr. Sachin Mittal, Advocate,
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. Revision is against an order dismissing an application filed under Order 7 Rule 11 CPC for rejection of a suit. The petitioner would point out that the respondent is a plaintiff in a suit instituted in the year 2007 staking a claim to the property of the father as inherited by the mother and on whose death, she as an heir was entitled to a share equal to that of the defendant. The contention raised by the defendant for the rejection of the plaint was that in respect of the estate of the father during the lifetime of the mother

herself, the plaintiff had filed a suit for claiming 1/3rd share. The defendant propounded a Will as said to have been executed by the father on 01.10.1973 and a decree was passed on 29.10.1983 in terms of a compromise brought between parties. A compromise took a shape of an affidavit given by the plaintiff conceding to the Will executed by the father in favour of the defendant and restricting her claim only to 13 bighas 6 biswas of land situate in Karnal. At that time, the khasra number for the property had not been given and subsequently the details were brought-forth and an amended decree was passed on 29.10.1983. The plaintiff had stated that she had given up her claim in respect of the remaining lands and the judgment passed by the court in terms of the affidavit specifically declares that the plaintiff retained no other right in the property.

2. The present suit is filed contending that she did not file the present suit on a claim that on the death of the mother, a fresh cause of action has arisen and she had also not known the existence of several properties and, therefore, she was entitled to lay a fresh claim. This was resisted by the defendant by reference to the earlier compromise decree passed in Civil Suit No.368 of 1983.

3. I find the basis of the suit was itself untenable and purely vexatious. A party who is confronted with a Will in defence and if given effect to would have totally disinherited her, gives up prosecution of the suit after an agreement with the defendant to take

certain extent of property and forsakes for claim in relation to the estate to the father, she will have no fresh cause of action arising on the death of the mother. If only there was any property left independently in the hands of the mother which had no source of title through the father, there is a scope of fresh suit; otherwise she was barred in law by the principle of estoppel. A compromise decree operates as estoppel and it will be untenable to contend that she would have an independent right after her mother's death. It has been held in **Daljit Kaur Versus Muktar Steels Pvt. Ltd-(2013) 15 CC 607** that a consent decree operates as an estoppel and is valid and binding unless it is set aside. What was given up through the decree was her right in the estate of the father when the mother was still alive. If the compromise decree itself did not stipulate any particular share or a particular extent as belonging to the mother as far as the plaintiff is concerned, that decree will operate conclusively to extinguish any right to the estate of the father. It will be irrespective of the fact that the mother had an independent share. It is not as if a decree provides for any particular share to the mother and that share is being claimed by the plaintiff now. If the defendant was setting up her own defence through the bequest under the father and the plaintiff had accepted the Will and was receiving a bounty which should support the valid consideration for grant of a decree and was giving up her right, it cannot be reopened by a fresh suit.

Order 7 Rule 11 CPC contemplates a bar of law as constituting one of the grounds for rejection of plaint. Here the bar was clearly an operation of the order of estoppel by a compromise decree.

4. The impugned order is set aside and the revision petition is allowed with costs of ₹ 3,500/- against the respondent. The plaint is ordered to be rejected.

(K.KANNAN)
JUDGE

16.07.2015
sanjeev