

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

SAO No.13 of 2007 (O&M)

Date of decision: November 30, 2015

Harpal Singh

-Appellant

Versus

Kiranbir Kaur and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Daldeep Singh, Advocate
for the appellant.

Mr. F.S. Virk, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J. (ORAL)

CM No.25078-CII of 2015

Application is allowed and accompanied documents
are taken on record subject to all just exceptions.

SAO No.13 of 2007

[1]. After hearing this case for some time, it is found that
the trial Court dismissed the suit by holding that the same is
barred by res judicata on the application filed by defendant
No.3-Harpal Singh. Second application was filed by the plaintiffs

seeking directions for filing written statement on behalf of defendants No.1 to 9. Defendants No.10 had already filed the written statement. Said application was declined by the trial Court by holding that since the suit has been dismissed being barred by res judicata, therefore, there is no need to file written statement.

[2]. In appeal before lower Appellate Court, it has been found with reference to earlier order dated 28.11.1991 passed in Civil Suit No.205 dated 20.07.1991 that the withdrawal of the suit was on the basis of compromise for which Smt. Labh Kaur the then plaintiff and her attorney prayed for withdrawal of the suit. Plaintiffs Ranbir Kaur and Kiranbir Kaur impleaded as defendants No.13 and 14 in the said suit were not the signatory of the compromise but the statement of Labh Kaur was to the effect that parties have entered into compromise among themselves and plaintiff is satisfied with the Will dated 05.03.1990 made by Smt. Sukhwant Kaur widow of Amrao Singh in favour of Harpal Singh, Hardev Singh, Manjit Singh and Mohinder Singh is correct. Whether or not the same creates res judicate for a subsequent litigation would have explanatory note in the context of available evidence at a subsequent stage.

[3]. Only grievance of the learned counsel for the appellant at this stage is that the lower Appellate Court while remanding the case back to the trial Court for fresh decision on

merits has recorded positive findings regarding res judicata not involved in the case. Learned counsel further states that he would be satisfied in case directions are issued to the trial Court to decide the suit afresh without being influenced by any observation made in the remand order dated 02.12.2006. So far as, second prayer at the instance of the plaintiffs is concerned the same would go automatically in case trial Court is to decide the suit afresh on the basis of suit being maintainable. All the defendants would be at liberty to file written statement subject to the schedule as may be granted by the trial court. The prayer made on behalf of appellant seems to be justified in view of the fact that once the suit itself is being remanded back to the trial Court by the lower Appellate Court, any finding recorded on merits would have no bearing for ultimate decision of the suit based on evidence on record. To that extent the apprehension shown by the appellant seems to be justified.

[4]. Learned counsel appearing on behalf of respondents has no serious objection to the aforesaid cause. Even otherwise, I am of the considered view that the trial Court would make every endeavour to decide the suit on merits as expeditiously as possible without being influenced by any of the observation made by the lower Appellate court while remanding the case. The observations so made were in the context of appreciating the merits only for the purposes of remand and not otherwise.

Trial Court would be at liberty to appreciate the available material on record and thereafter to proceed the suit on merits in accordance with law.

[5]. Both the parties are directed to appear before the trial Court on 07.01.2016.

Disposed of.

(RAJ MOHAN SINGH)
JUDGE

November 30, 2015
prince