

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4402 of 2011
Date of decision : September 09,2015

Ram Kumar

..... Appellant

Versus

Tasvir Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate
for the appellant.

Mr. Sandeep Kumar Sharma, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The appellant-defendant, in present appeal, has impugned the finding rendered, on issue No.3, in the judgment and decree dated 15.6.2011 passed by the Additional District Judge, Rohtak, whereby, the suit filed by the respondent-plaintiff for partition has been dismissed. The grievance in short is that appellant-defendant had set up partition deed which had been disbelieved by the courts below.

Mr. Sunil Chada, learned Senior counsel assisted by Mr. Chetan Bansal, appearing on behalf of the appellant submits that the aforementioned findings have seriously prejudiced the defence of the appellant, in a subsequently instituted suit by the respondent-

plaintiff claiming the partition. His client has an apprehension that the aforementioned findings rendered by trial court be not read against his claims while raising the defence in a subsequently instituted suit.

He further submits that though the suit was dismissed by the trial court, but the appellate court did not accept the partition/settlement set up by the appellant-defendant and upheld the judgment and decree of the trial court. It is against the aforementioned findings, the present appeal has been filed. In support of his findings he relies upon the judgment of this Court in **Hari Parshad Vs. Mangat Ram and another 1985 AIR (Punjab) 273** to contend that in the appeal is maintainable with regard to the finding, even if there is no decree, against the defendant as it would have far reaching consequences, in subsequently instituted proceedings.

Mr. Sandeep Kumar Sharma, learned counsel appearing on behalf of the respondent-plaintiff submits that the present appeal is not maintainable, as there is no judgment and decree against the appellant-defendant. He has relied upon various judgments but the latest one is **Hardevinder Singh Vs. Paramjit Singh and others 2013 (1) CCC 833(SC)**

I have heard learned counsel for the parties and appraised the paper book.

It is a matter of record that after dismissal of the suit the respondent-plaintiff has again instituted suit for partition. The plea of partition/settlement alleged to have been affected between the

parties to the *lis* taken in the previously instituted suit has not been believed. The apprehension expressed, that the finding rendered by the appellate court in disbelieving the partition deed may not be read against the appellant-defendant by applying the principles akin *res judicata* has force. In as much as, the appellant-defendant may not be permitted to take up a plea in the subsequently instituted suit.

It is a matter of record that suit of the respondent-plaintiff was dismissed on technical grounds, i.e. for partial partition and by not impleading all effective parties. The ratio decidendi culled out by this Court in **Hari Parshad's case (supra)** is squarely applicable to the facts and circumstances of the case, inasmuch as, that provisions of Section 11 CPC provides that no court shall try any suit or issue in which the matter directly and substantially in issue, has been directly and substantially in a former suit between the same parties and has been heard and finally decided.

Since the plea set up by appellant-defendant already has been disbelieved by the appellate court. In my view, the appellant cannot be prevented from raising such a plea in a subsequent suit filed at the behest of respondent-plaintiff. Accordingly, the finding rendered by the appellate court is hereby modified. It is directed that appellant-defendant would not be prevented from taking up a plea, of family settlement/partition in a subsequently instituted suit. In essence, the plaintiff would not be permitted to raise the plea of *res judicata*.

It is made clear that finding rendered by both the

court below would not come in the way of the parties to the *lis* in a subsequently instituted suit. With the aforementioned finding/reasoning, the appeal stands disposed of.

**(AMIT RAWAL)
JUDGE**

**September 09, 2015
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