

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

**Regular Second Appeal No.280 of 2013 (O&M)
Date of Decision: January 07, 2015.**

Baldev Singh

.....APPELLANT(s).

VERSUS

Sudam Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rahul Sharma, Advocate with
Mr. Pankaj Katia, Advocate
for the appellant (s).

Mr. N.C. Kinra, Advocate
for respondents No.1 to 4.

SURINDER GUPTA, J.

The dispute in the present case pertains to the inheritance of estate of Daulat Devi, mother of appellant-plaintiff, defendants-respondents No.1 to 3, 5 and Urmila Devi. Julfi Ram father of plaintiff died in the year 1964 while Daulat Devi died on 23.06.1988. After her death, respondent-defendant No.2 got the mutation of inheritance of the estate of Daulat Devi entered in the name of her above referred natural heirs but the revenue officials sanctioned the mutation in favour of Sudam Singh respondent No.1 and his wife Sheela Devi respondent No.4 on the basis of Will dated 17.05.1988 alleged to have been executed by Smt. Daulat Devi.

2. Pritam Singh son of Daulat Devi filed a civil suit No.32 of 24.01.1992 claiming 1/6th share in the estate of Daultat Devi, which was contested by Sudam Singh and his wife Sheela Devi, who set up Will of Daulat Devi dated 17.05.1988 in their favour. On the issue of Will, learned

Senior Sub Judge, Hoshiarpur in para 14 and 15 of judgment dated 11.08.1994 recorded finding against Sudam Singh and his wife, which reads as follows:-

“14. From the above discussion, it has been conclusively proved that the will is not genuine one. Daulat Devi had no special reasons to disinherit her other sons and daughters and choose Sudam Singh and his wife to be exclusive owners of her property after her death. The fact rather is that Sudam Singh defendant has made calculated attempt to conceal the material facts from the court. He denied that Daulat Devi was a diabetic patient; whereas she was in fact a patient of this disease. He denied that she suffered paralytic attack before her death but he has been suitably and properly contradicted by his own witness Bhim Singh.

15. In the light of detailed discussions held above, I hold that the contesting defendants have failed to prove the will Ex.DW1/A. The issue is accordingly held against them and in favour of the plaintiff.”

3. Sudam Singh and his wife Sheela Devi along with Urmila Devi daughter of Daulat Devi filed appeal against the judgment of Senior Sub Judge, Hoshiarpur (Civil Appeal No.157 of 1997) which was also dismissed.

4. Not satisfied, Sudam Singh and his wife Sheela Devi filed regular second appeal (RSA No.2670 of 1999). During the pendency of that regular second appeal, the appellants entered into a compromise (Ex.C1) with Pritam Singh and their statement dated 17.02.2000 was recorded as follows:-

“Joint statement of Sudham Singh and Sheela Devi (appellants) and Pritam Singh, respondent No.1, on S.A., who have been identified by their respective counsel.

We state that we have arrived at a compromise vide compromise deed, Annexure C-1, and as per this compromise, the plaintiff Pritam Singh will become the

absolute owner of the land measuring 20 kanals as mentioned in para-3(ii) of the compromise, Annexure C-1. The first party shall deliver the possession of 20 kanals of land mentioned in the compromise to Pritam Singh within 15 days from today. If the possession is not given, Pritam Singh will be entitled to get the same through the court of law, on the basis of his absolute ownership. The appellants will have no grievance whatsoever if the mutation of the land measuring 20 kanals is entered in the name of Pritam Singh by revenue authorities. Pritam Singh further admits the genuineness of the Will dated 17.5.1988 executed by Daulat Devi in favour of the present appellants. The plaintiff will not oppose or object to the mutation of inheritance of late Daulat Devi on the basis of the Will dated 17.5.1988 in favour of Sudam Singh and Sheela Devi.”

5. Compromise Ex.C1 was placed on record and in view of the compromise, the appeal was disposed of vide order dated 17.02.2000 which reads as follows:-

“In view of the compromise, Annexure C-1, arrived at between the parties, it is hereby declared that the plaintiff shall become the absolute owner of the land measuring 20 kanals as mentioned in the compromise deed itself and he shall be entitled to get the possession of the same from the revenue authorities, who are directed to give the possession to the plaintiff and also enter the mutation of the land in his favour. It is further declared that the defendant-appellants shall inherit the estate of Daulat Devi on the basis of registered Will dated 17.5.1988 and the revenue authorities shall enter the mutation in favour of the defendant-appellants on the basis of that Will regarding the remaining land. Pritam Singh will, however, get the possession of the land measuring 20 kanals as mentioned in the compromise deed within 15 days from today and the defendant-appellants shall hand over the possession to the plaintiff-respondent. If the possession is not handed over to Pritam Singh within 15 days

from today, it will always be open to the plaintiff-respondent to get the same through the court of law. The judgment and decree of the courts below are modified in the light of this compromise. The compromise, Annexure C-1, shall form part of the decree.

Copy dasti to the parties.”

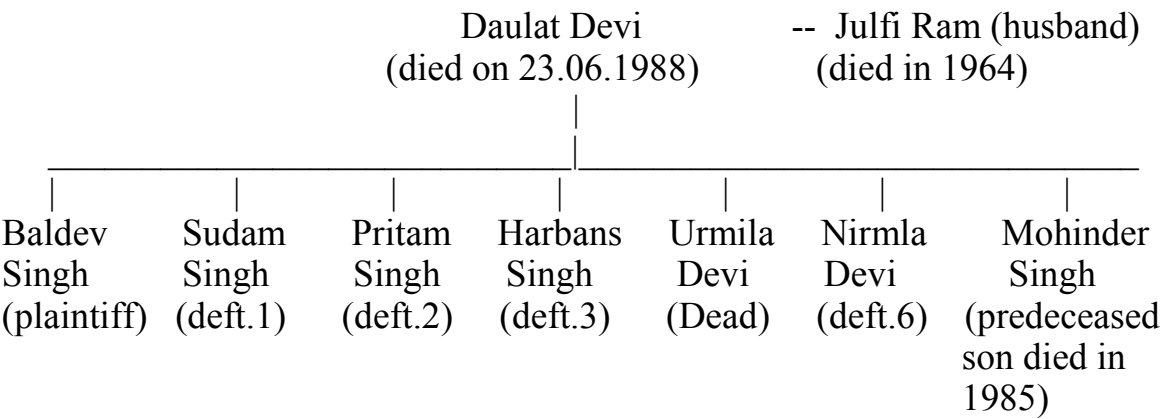
6. The above settlement saw the end of litigation between Sudam Singh, his wife Sheela Devi and Pritam Singh as none of the other legal heirs of Daulat Devi was party to the compromise. As a result of order dated 17.02.2000, the findings of the Courts below with regard to the illegality of the Will executed by Daulat Devi became redundant qua Pritam Singh. The other legal heirs of Daulat Devi, who were also party to lis, moved application for recalling of order dated 17.02.2000 but their application was dismissed with the observation that compromise between Sudam Singh, his wife and Pritam Singh has been rightly effected. This led to the second round of litigation between the parties.

7. Appellant-plaintiff Baldev Singh filed suit seeking the relief of declaration and injunction as follows:-

“Suit for declaration that plaintiff is joint owner in possession of 1/6th share of the land measuring 122 kanals 6 marlas left by his mother Daulat Devi, deceased comprised in khewat no.3, 170 and 403, khatauni Nos. 3, 170 and 415 bearing khasra nos.21-R/22(8-0), 23 (8-0), 24(5-16), 16-R/15/1(6-9), 17-R/11(7-11), 20(8-0), 21-R/17(9-8), 21-R/9(8-0), 11/4(1-12), 12(8-0), 18(8-0), 19(8-0), 20(7-12), 21(7-12), 40-R/19(8-16), 22(9-6) situated in village Badla, HB no.286, Tehsil and District Hoshiarpur as entered in jamabandi for the year 1997-98 and the compromise, if any entered, into between Pritam Singh and Sudam Singh, in respect of the suit land has no affect on the rights of the plaintiff in the same; with consequential relief of permanent injunction restraining defendants no.1 and 4 from alienating

any part of the land detailed above and suit for joint possession of 1/6th share of the plaintiff out of the land measuring 122 kanals 6 marlas fully detailed above.”

8. The following pedigree table Will help in understanding the relationship between the parties to the appeal:-



9. As per appellant-plaintiff Baldev Singh, Daulat Devi had cordial relations with all her sons and daughters and was being served by them. Earlier Pritam Singh had filed suit claiming 1/6th share out of the land left by Daulat Devi on the basis of natural succession, which Sudam Singh and his wife agreed to give him in the regular second appeal (RSA No.2670 of 1999). The Will was held to be a forged and fabricated document by the Courts below in the civil suit filed by Pritam Singh and that finding was never set aside on merits but became redundant in view of compromise of Sudam Singh and his wife with Pritam Singh, which do not affect, in any manner, the rights of other legal heirs of Daulat Devi.

10. On notice, respondents-defendants No.1, 4 and 8 appeared in the case while remaining respondents-defendants did not appear and were proceeded ex parte. Joint written statement was filed only by respondents-defendants No.1 and 4 and later on respondent No.8 was also proceeded ex parte.

11. Respondents-defendants No.1 and 4 have contested the claim of

appellant-plaintiff on the plea that in view of order dated 17.02.2000 passed by this Court in RSA No.2670 of 1999, the suit was not maintainable and was barred by the principle of res judicata. The preliminary objections that suit was bad for concealment of material facts; non-joinder and mis-joinder of necessary parties; cause of action; not properly verified, were also taken.

12. It was admitted that Daulat Devi owned 122 kanals 6 marlas of land and she died on 23.06.1988. She had executed a valid and registered Will during her life time in her sound disposing mind in favour of her son Sudam Singh and his wife, as such, no other legal heir of Daulat Devi had any share in her estate. Mutation was entered and sanctioned in favour of respondents-defendants No.1 and 4 on the basis of registered Will dated 17.05.1988 of Daulat Devi which was challenged by Pritam Singh respondent-defendant No.2 and his suit was decreed and appeal filed by respondents-defendants No.1 and 4 were dismissed. During the pendency of regular second appeal, Pritam Singh admitted the Will and entered into a compromise under which he was given 20 kanals of land comprised in khasra Nos.21/24(5-16), 21/23(8-0) and 22/22(6-4) out of suit land and he admitted the genuineness of the Will dated 17.05.1988 executed by Daulat Devi. Under the compromise, the suit of plaintiff Pritam Singh was dismissed.

13. Appellant-plaintiff reiterated his case in the replication and pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiff is entitled for declaration and permanent injunction ?OPP
- (2) Whether the suit is not maintainable ?OPD
- (3) Whether the plaintiff has no locus standi ?OPD
- (4) Whether the plaintiff is stopped by his act and conduct ?OPD
- (5) Whether the suit is not maintainable on the principles of res judicata ?OPD

- (6) Whether the court has no jurisdiction ?OPD
- (7) Whether the suit is time barred ?OPD
- (8) Whether the suit is bad for non joinder and mis joinder ?OPD
- (9) Whether the plaintiff has not come to court with clean hands ?OPD
- (10) Relief.

14. The trial Court held the suit filed by appellant-plaintiff as hit by the principle of res judicata and not maintainable, thereby debarring the plaintiff from claiming the declaration and injunction as prayed for. The findings of the lower Court were affirmed by first Appellate Court vide judgment and decree dated 04.09.2012.

15. Before proceeding further, it will be relevant to recapitulate certain admitted facts in this case, which are enumerated as follows:-

- (i) Daulat Devi died on 23.06.1988 leaving behind her sons Baldev Singh (appellant-plaintiff) Sudam Singh, Pritam Singh, Harbans Singh (respondents No.1 to 3), daughters Nirmla Devi and Urmila Devi.
- (ii) Daulat Devi was owner of 122 kanals 6 marlas of land.
- (iii) Husband of Daulat Devi namely Julfi Ram had died in the year 1964.
- (iv) Respondent No.1 Sudam Singh and his wife Sheela Devi respondent No.4 propounded a Will of Daulat Devi dated 17.05.1988 in their favour.
- (v) The Will was challenged by Pritam Singh son of Daulat Devi by filing a civil suit, wherein the Will executed by Daulat Devi was held to be forged document surrounded by suspicious circumstances.
- (vi) Sudam Singh and his wife Sheela Devi filed an appeal which was dismissed.

(vii) Sudam Singh and his wife filed regular second appeal (RSA No.2670 of 1999) claiming the genuineness of the Will but that regular second appeal was not decided on merits. In that regular second appeal, Pritam Singh entered into a compromise under which he was given 20 kanals of land with specific khasra numbers and he placed on file compromise Annexure-C1 withdrawing his suit.

16. Learned counsel for the appellant has argued that both the Courts below have committed grave error of law and fact while dismissing the suit of appellant with the observation that the suit is not maintainable and is hit by principle of res judicata. The Court of Additional Civil Judge (Senior Division), Hoshiarpur had decided the suit under the erroneous notion as if the appellant-plaintiff had sought to challenge the consent decree while in fact, no consent decree was ever passed against the appellant-plaintiff or he has challenged the same. The first Appellate Court has gone a step further while observing that this Court vide order dated 17.02.2000 has held Will dated 17.05.1988 as genuine. The findings of both the Courts below are not only erroneous but have been recorded in total disrespect of the facts on file. Swayed by misreading of evidence on record, no finding was recorded on the Will propounded by Sudam Singh.

17. Learned counsel for respondents has argued that the suit filed by Baldev Singh was barred by principle of res judicata. The remedy available to the appellant-plaintiff was to seek revival of the regular second appeal and the application to this effect was dismissed by this Court against which Special Leave Petition was filed, which is still pending. He has argued that in view of the order dated 17.02.2000 passed in RSA No.2670 of 1999, the civil Court was barred from entertaining any fresh suit concerning the inheritance of Daulat Devi.

18. Before proceeding further, it will be relevant to look into the circumstances which led to the decision of regular second appeal No.2670 of 1990 vide order dated 17.02.2000.

19. A compromise Ex.C1 was produced before this Court, whereby plaintiff Pritam Singh sought permission to withdraw the suit in view of the settlement under which he got his 1/6th share, which comes to about 20 kanals, by way of specific khasra numbers as mentioned in compromise, of which possession was also delivered to him. Under the compromise, Pritam Singh was left with no interest in the suit property and this Court vide order dated 17.02.2000 recognized the compromise and allowed the disposal of the appeal accordingly. No findings were recorded regarding genuineness of Will dated 15.05.1988 propounded by respondents No.1 and 4 on merits. It is only Pritam Singh, who had relinquished his claim regarding the remaining land of Daulat Devi as even by natural inheritance, he would have received only 1/6th share in the land left by Daulat Devi. Being plaintiff, Pritam Singh was competent to withdraw the suit but the compromise in between Sudam Singh, his wife and Pritam Singh, in no manner, affect the right, title or interest of other legal heirs to the estate of Daulat Devi.

20. Following substantial questions of law arise for consideration in this appeal:-

Whether the observations of both the Courts below that suit filed by appellant-plaintiff was barred by the principle of res judicata and not maintainable, are erroneous and not made out under law in view of the facts and circumstances of the case.

21. Res judicata is a plea available in civil proceedings in accordance with the provisions of Section 11 of Code of Civil Procedure, which reads as follows:-

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

22. Res judicata is a doctrine applied to give finality to a lis in original or appeal proceedings. The doctrine of res judicata in substance means that an issue or a point decided and attaining finality should not be allowed to be re-opened and re-agitated again and is based on principle of equality, good conscious and justice.

23. A bare perusal of Section 11 above shows that the doctrine of res judicata applies only when the matter in issue in the earlier suit has been heard and finally decided. Where there is no final decision in respect of the matter involved in the earlier lis, the principle of res judicata do not apply to the subsequent lis.

24. In this case, the two Courts have recorded the finding regarding the Will of Daulat Devi propounded by respondent No.1 and his wife against them and have held that the Will was not proved to be a genuine Will executed by Daulat Devi. The beneficiary of the Will Sudam Singh and his wife acted very cleverly and prevailed upon Pritam Singh plaintiff in the earlier suit by giving him his due share of land by specific khasra numbers, who under the compromise Ex.C1 agreed to withdraw the suit. This Court recognized the compromise. No finding was recorded by this Court vide order dated 17.02.2000 on merits. As such, the provisions of Section 11 CPC are not applicable to the facts and circumstances of the present case and the

observations of the Courts below to this effect are not only erroneous but are perverse and against law.

25. Order XXIII Rule 3 CPC deals with the passing of decree on any lawful agreement or compromise between the parties during the pendency of the suit or appeal. Appellant-plaintiff being not a party to the compromise in the regular second appeal No.2670 of 1999, in no manner, is barred from filing a fresh suit. Under that agreement, defendant Sudam Singh and his wife had satisfied the claim of plaintiff Pritam Singh, by giving him his share in the land left by Daulat Devi. Even otherwise, the plaintiff is a dominus litis and can pursue or relinquish claim with regard to the subject matter of the suit or part of it. In earlier suit, Pritam Singh had raised claim only against Sudam Singh and his wife and not against other defendants including plaintiff Baldev Singh. The fact that Baldev Singh was ex parte or had not contested the suit, in no manner, affect his right as no relief was claimed by Pritam Singh against him. Baldev Singh-appellant was rather beneficiary, in the event of the suit of Pritam Singh being decreed. The decision of RSA No.2670 of 1999 vide order dated 17.02.2000, in no manner, either binds of appellant or operates adversely against him. This finding of Courts below on issues No.1, 2, 4 and 5 are reversed, being not tenable, perverse, erroneous and against law.

26. Appellant-plaintiff has filed the suit for declaration claiming 1/6th share in the land left by his mother Daulat Devi. The suit was contested by Sudam Singh and his wife Sheela Devi, who not only relied upon the earlier litigation but also propounded a Will of Daulat Devi in their favour. A perusal of the file shows that no issue with regard to the genuineness and validity of the Will propounded by respondents No.1 and 4 was framed by the Court of Additional Civil Judge (Senior Division), Hoshiarpur, despite it

being a very material issue and both the Courts below avoided to record any finding regarding genuineness and validity of Will dated 17.05.1988.

27. As a sequel of my above observations, this appeal is accepted. Judgment and decree passed by both the Courts below are set aside. The case is remanded. The trial Court may frame issue with regard to the Will propounded by Sudam Singh and his wife and any other additional issue which arise from pleadings of parties, record evidence of parties, as required under law and decide the case afresh.

28. As this is a very old case pertaining to the year 2001, a time frame for disposal of the same is fixed. After framing of fresh issues, the trial Court will give one adjournment calling for the list of witnesses of plaintiff and one more adjournment for placing on record the affidavits of witnesses, other than official witnesses and then proceed to record the statements of witnesses of plaintiff. The same procedure will be followed in case of defendants after conclusion of plaintiff's evidence. The plaintiff and defendants will be given four months time each to conclude their evidence and this case shall be disposed of by the lower Court on or before 31st of October, 2015. The parties are directed to appear before District Judge, Hoshiarpur on 20.01.2015 who will entrust the same to competent Court of jurisdiction for disposal.

29. Record of the Courts below with copy of this judgment be sent to District Judge, Hoshiarpur immediately.

January 07, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE