

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3661 of 2013 (O&M)
DECIDED ON: SEPTEMBER 22, 2015

SATISH KUMAR SANGHI

.....APPELLANT

VERSUS

DHARAMPAL & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the 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?*

Present:- Mr. Sanjay Mittal, Advocate
for the appellant.

JASPAL SINGH, J

Feeling dissatisfied against the judgment and decree dated March 26, 2013 passed by learned Addl. District Judge, Narnaul whereby, appeal preferred by Girdhari Lal (father of the appellant) challenging the judgment and decree dated April 02, 2008 passed by learned Addl. Civil Judge (Sr. Division), Narnaul in civil suit No. 242 dated April 29, 1996 titled as *Girdhari Lal v. Dharampal & others* was dismissed and the judgment and decree dated April 02, 2008 was upheld.

2. Briefly stated, the facts giving rise to the instant lis are that earlier Lala Fateh Singh son of Lala Ganeshi Lal was the owner in

possession of land measuring 555 bighas 13 biswas. He leased out the land in dispute in favour of Girdhari Lal for five years for an amount of ₹30/- per month including ₹404/- per annum as land revenue. In this regard mutation no 6150 was entered and sanctioned in his favour on December 28, 2000 B.K. Thereafter the owner extended the term of lease deed and to this effect a mutation No. 6622 dated October 19, 2005 B.K. was entered and sanctioned. It is submitted that earlier land measuring 555 bighas 13 biswas had been in cultivating possession of Sheo Lal and Sohan Lal being tenants. After creation of the lease deed in his favour both the tenants admitted him landlord by way of executing attorney in his favour. They both started paying rent to him instead of Lala Fateh Lal. In this regard an entry was also made in jamabandi for the year 1950-51. It is further averred that both the tenants moved two separate applications for acquiring ownership rights in land measuring 8 bighas 13 biswas and 22 bighas 2 biswas respectively fully detailed and described in para no.2 of the plaint on 13.01.1965 before Assistant Collector Ist Grade, Narnaul. In the said applications the plaintiff adopted son of Fateh Lal, his sons and wife of Lala Fateh Singh were arrayed as respondents. Since respondents no. 3 to 5 were minor at that time, so the Reader of that Court was appointed as Court Guardian. The said applications were also supported by jamabandies for the years 1950-51 to 1962-63. Since there remained some irregularities and illegalities in defending the interest of the minor Suresh Chand, so the said Suresh Chand filed two civil suits No. 29 and 30 dated 9.10.1970 titled as Suresh Chand Vs. Sohan Lal and Suresh Chand Vs. Sheo Lal arraying the present plaintiff as defendant No.1 and Nand Kishore as defendant No.2. Both the said suits

were contested by the tenants Sohan Lal and Sheo Lal tooth and nail. In para No. 12 of their respective written statements they admitted the relationship of landlord-tenant between the present plaintiff and themselves. The suit was contested mainly on the ground that the civil court had no jurisdiction to try and decide the controversy. So, from the said facts it is clear that the said suits were not filed for determination of tenancy rights between the present plaintiff and the tenants Suresh Chand and Sheo Lal. In their defence the said Sohan Lal and Sheo Lal did not take any plea that they were direct tenant under Lala Fateh Lal rather they admitted the present plaintiffs their landlord. However, by over-looking the oral as well as documentary evidence to this effect vide judgment dated 1.10.1971 learned civil court held the lease deed executed by Fateh Lal in favour of the present plaintiff as false and frivolous. Further it was also held that the said Sohan Lal and Sheo Lal were not the tenants under Girdhari Lal (Plaintiff) rather they were tenant under Nand Kishore.

3. It is further averred that Suresh Chand etc. filed appeal against the said judgment vide judgment and decree dated 24.12.1975 passed by the learned Appellate Court. Similarly, the second appeal filed in the Hon'ble High Court was also dismissed in limini. Since in judgment and decree dated 1.10.1971, 24.12.1975 and 12.07.1976, there was no any adverse finding against the present plaintiff, so he could not have filed any appeal against the said judgment. It is further maintained that the plaintiff has been receiving the rent from his tenants Sohan Lal and Sheo Lal since the year 1944. In the year 1975, both the tenants even tendered the rent in the government treasury. The same was disbursed in his favour. Thereafter, the plaintiff

moved an application to recover the arrears of last three years in the court of Assistant Collector IInd Grade, Narnaul. That was decreed in his favour vide order dated 11.2.1980. The appeal filed by Sohan Lal against the said order was dismissed on 23.3.1981. Similarly, another suit filed by him against Sheo Lal was also decreed in his favour on 19.02.1981 passed by the then Assistant Collector IInd Grade.

4. Thereafter the LRs of Sohan Lal and Sheo Lal challenged the said orders in civil court by filing two separate suits no. 441 of 1981 dated 5.9.1981 and 442 of 1981 dated 5.9.1981 titled Dharampal Vs. Girdhari Lal and Prabhati Vs. Girdhari Lal, respectively. Both the suits were decreed holding that the findings already given in the civil suit No. 29 and 30 of 9.2.1970 to the effect that no any relationship of landlord and tenant existed between the present plaintiff and Prabhati etc. operated as res-judicata. So, both the suits were decreed in favour of the then plaintiffs and against Girdhari Lal (present plaintiff). The appeal filed by the present plaintiff was dismissed. The second appeal filed before the Hon'ble High Court is still pending. Similarly, in subsequent applications filed by the plaintiff before Assistant Collector Ist Grade, Narnaul for ejectment of the defendants was also dismissed vide order dated 5.2.1993 holding that the decision in civil suit No. 29 and 30 operated as res-judicata. On the same analogy the revision filed before the Commissioner was also dismissed vide order dated 16.1.1996. It is submitted that in fact the findings with regard to relationship of tenant-landlord given in the civil suits decided on 1.10.1971, 24.12.1975 and 12.7.1976 do not operate as res-judicata. Hence is not binding on his rights. He made repeated requests to the defendants to admit his claim but

now they are adamant in refusal. Hence, the present suit was filed.

5. On notice, the defendants resisted the suit by filing written statement taking common legal objections of maintainability of the suit, res-judicata, limitation, cause of action, jurisdiction and non-joining of necessary parties. On merits also the suit has been contested on the same lines by contending that the total land measuring 555 bighas 13 biswas had been coparcenary and ancestral property in the hands of Lala Fateh Lal son of Ganesh Lal. He never intended to lease out the said property in favour of his adopted son Girdhari Lal (present plaintiff) rather the execution of such lease deed, if any, was just an eye wash. The impugned mutations no. 6150 and 6622 as alleged by the plaintiff were entered on the basis of ostensible lease deeds. In fact the present plaintiff Girdhari Lal had filed a acivil suit no. 194 dated 02.04.1999 against his adoptive farther for partition of the said land claiming his share therein to the extent of $\frac{1}{2}$ being coparcener. The said suit was disposed of on 14.03.2000 as per the award given by the Arbitrator. As per the award, Fateh lal authorized to manage the entire land till his life. However, he could not alienate the same. In view of the said judgment the status of joint Hindu Family between the plaintiff and his adoptive father was severed. So, after severance, question of handing over the entire property to the plaintiff on lease as alleged, did not arise. It is submitted that Sohan Lal and Sheo Lal, predecessor in interest of the defendants no. 1 to 3 and 4 to 9 had been tenants under the landlord Lala Fateh Lal. Since the present plaintiff Girdhari Lal inherited the property of his father so, they started paying rent to the said successor. In these circumstances, it cannot be said that their predecessors in interest or they have been direct tenants under

the present plaintiff. Since the answering defendants as well as their predecessor in interests were simpleton and illiterate persons so, they have been cultivating the land as tenants without noticing the revenue entries. It is further submitted that Sohan Lal and Sheo Lal moved applications for acquiring ownership rights qua the land under their respective possession as tenants in the court of Assistant Collector 1st Grade, Narnaul. It has been vehemently opposed and denied that at the time of filing the said applications the then respondents no. 3 to 5 were minors. In civil suits no. 29 and 30 dated 9.2.70 titled Suresh Vs. Sheo Lal and Suresh Vs. Sohan Lal already decided on 01.10.71 the present plaintiff Girdhari Lal and Nand Kishore were also impleaded as defendants, so the findings given in the said suit are binding on them and operate as re-judicata. It is further submitted that the answering defendants or their predecessors in interest never admitted themselves as direct tenants under the plaintiff Girdhari Lal.

6. Further the answering defendants also filed two civil suits no. 441 and 442 of 1981 on dated 5.9.81 titled Dharampal Vs. Girdhari before the civil court. In those suits also it was held that the findings qua the ownership of tenants-landlord given in previous suit operated as res-judicata. Mere depositing of the rent in the ejectment petition dated 1.3.90 to evade from their ejectment on technical ground does not mean that they admit themselves as direct tenant under the present plaintiff. At the end a prayer has been made that the suit may kindly be dismissed with heavy costs.

7. Replication controverting the contents of the written statements and re-asserting the stand taken in the plaint was filed. From the pleadings of the parties, following issues were framed as under:-

1. *Whether the plaintiff is entitled to the relief of declaration as prayed for ? OPP.*
 2. *Whether the suit is not maintainable in the present form ? OPD*
 3. *Whether the plaintiff has no locus standi to file the present suit?*
 4. *Whether the suit is barred by limitation ? OPD*
 5. *Whether the plaintiff is estopped from filing the suit by his own acts and conduct ? OPD*
 6. *Whether the defendants are entitled to recover the special costs from the plaintiff? OPD*
 7. *Whether the suit is barred by the principles of res-judicata ? OPD*
 8. *Relief.*
8. While assailing the impugned judgements and decrees passed by both the courts below, it has been ebulliently argued by learned counsel for the appellant that both the courts below have committed an error while applying the doctrine of res-judicata. In view of the judgment and decree passed in civil suit Nos. 29 and 30 of 1970. In fact, principal of *res-judicata* is not applicable in the facts and circumstances of the instant case, as plaintiff-appellant was defendant No.2 in the afore-said civil suits and no relief was claimed against him by Suresh because plaintiff-Suresh had challenged the proceedings and validity of the appeal, its order as well as revisional order passed by the Revenue authorities on the ground that plaintiff-Suresh etc were minors during the appeal and the court guardian appointed in trial Court did not continue in the appeal and the new court guardian in appeal was wrongly appointed, who did not take up the proper proceedings as per order 32 Rule 3 CPC. There was controversy between the plaintiff and Shoe Lal with regard to the validity of proceedings of the

Collector in appointment of court guardian of minor land owners Suresh etc. However, there was no controversy between the parties in their pleadings that Sohan Lal and Shoe Lal were the direct tenants of the land owners or that they were sub-tenants of Girdhari Lal or that mutation No. 6150 and 6622 were legal or illegal. Moreover, there was no such pleadings that lease of Fateh Lal to Girdhari was false and illusory. Moreover, trial Court in the said suit gave a finding without any pleading and such a finding was otherwise also not essential for the adjudication of the claim of plaintiff in those suits.

9. It has further been contended by learned counsel for the appellant that principle of *res-judicata* could have been only applicable if some dispute has been decided by trial Court in an earlier suit and it was necessary to decide the conflict in order to give parties relief, which has been claimed. As it was not necessary in those suits to decide the relationship of landlord and tenant. Thus, the findings of trial Court in those suits cannot create any bar that the present suit is on the basis of *res-judicata*. It has further been submitted by learned counsel for the appellant that ingredients which essential to operate a decision as *res-judicata* among co-defendants are elaborated by Hon'ble Apex Court in ***AIR 1970 SC page 809***, which are reproduced as under:-

- a) *There is a conflict of interest between them;*
- b) *It is necessary to decide that conflict in order to give the plaintiff the relief which he claim;*
- c) *The question between the co-defendants is finally decided.*

10. In the instant case, the condition mentioned at clause 'a' and 'b'

are not fulfilled. Girdhari Lal who was defendant No.2 in the afore-said civil suits No.29 and 30 did not contest the same, as no relief was claimed against him. As such, there was no conflict of interest in pleadings between defendant No.1 Sohan Lal/Sheo Lal and defendant No.2-Girdhari Lal. Otherwise also Girdhari Lal was defendant No.2 in those suits and the suit filed by Suresh etc. were dismissed. Though the findings on issue No.5 was against him but at that time he had no right to appeal due to dismissal of suit in toto. The provision of filing cross-objections to challenge the findings by respondent in appeal was not available prior to the addition of explanation under Rule 22 CPC, which were became operative by way of Act No. 104 of 1976 w.e.f. 01.02.1977. Meaning thereby, that prior thereto, there was no such explanation in CPC enabling the respondent to prefer the cross-objection. In the instant case adverse findings on issue No.5 in the judgment and decree dated 01.10.1971 could not be challenged by way of cross-objections by Girdhari Lal, their being no such provision at that time. Thus, the question of finding on issue NO.5 in those civil suits cannot be applied as a *res-judicata* in the subsequent suit. Thus, the impugned judgments and decrees passed by both the courts below are not sustainable in the eyes of law and deserve to be set aside and the suit of plaintiff merits decretal.

11. This Court has given an anxious thought to the afore-said submissions made by learned counsel for the appellant and have perused the records available on file.

12. Undisputably, the plea of the present plaintiff that the findings on the question of relationship etc. was nullity being *obiter dicta* was not accepted by both the Courts below. It is amply proved on record that Fateh

Lal, adoptive father of the present appellant, was the owner of land measuring 555 Bighas, 13 Biswas and during his life time Girdhari Lal, file a suit for partition of the joint Hindu family property claiming himself co-sharer to the extent of $\frac{1}{2}$ share. Sohan Lal and Sheo Lal predecessor in interest of the present plaintiff were tenants on the part of the said land. However, Sohan Lal was paying a rent to the tune of ₹120 per annum whereas Sheo Lal was paying a rent to the tune of ₹253 per annum. The said suit for partition was decided on the basis of an award given by the Arbitrator. According to which, Fateh Lal was permitted to manage the affairs of entire land during his life time. He was not competent to alienate his $\frac{1}{2}$ share to his son. Thus, after the partition the status of joint Hindu family was severed. Here it would be pertinent to mention that in order to circumvent the provisions of Ceiling Act and to save their land, Fateh Lal and Girdhari Lal executed a lease deed in favour of Girdhari Lal regarding which mutation No. 6150 and 6622 were incorporated under sanction. But since Sohan Lal/Sheo Lal were already tenants over the aforesaid land, they were shown as sub tenants under Girdhari Lal and these entries were not though correct but continued in the revenue record. When Fateh Lal was taken away by nature, his entire estate devolved upon Girdhari Lal and his sons. Subsequent thereto, there was some family settlement, according to the said land fell in the share of Nand Kishore son of Girdhari Lal. Sohan Lal and Sheo Lal on coming to know the afore-said settlement attorned their tenancy in favour of Nand Kishore son of Girdhari Lal and Nand Kishore in connivance with revenue authorities got the entry in the name of Girdhari Lal as tenant whereas, Sohan Lal and Sheo Lal were shown as sub tenants.

The record further reveals that civil suit Nos.29 and 30 were filed by Suresh Chand in which a specific finding was given that Sohan Lal and Sheo Lal never remained sub tenants under Girdhari Lal. Rather they were direct tenants under Fateh Lal vide judgment dated 01.10.1971. An appeal was also preferred against the said judgment and decree dated 01.10.1971 but that stands dismissed. Even, the RSA was also filed before this Court, which also met the same fate. Subsequent thereto, Girdhari Lal instituted suit No.1 on February 08, 1980 before Assistant Collector IInd Grade seeking recovery of rent from Sohan Lal. In that suit Sohan Lal disputed the relationship of landlord and tenant but that suit was decreed on February 11, 1980 and appeal No.2 dated March 25, 1980 was also filed by Sohan Lal before Collector, Narnaul. During pendency, Sohan Lal breathed his last and thus his Lrs were brought on record. Ultimately that appeal was dismissed on May 25, 1981. Similarly, Girdhari Lal also instituted suit No. 3 of 1979 against Sheo Lal for recovery of rent for three years. During the pendency thereof, Sheo Lal expired and his Lrs were brought on record. He also disputed the relationship of landlord and tenant. Ultimately that suit was decreed on February 19, 1981. Not only this, Sohan Lal and Sheo Lal challenged those orders passed by Assistant Collector IInd Grade, Narnaul before civil court and that suit was decreed on April 27, 1987 by observing that the findings in civil suit Nos. 29 and 30 of February 09, 1970 operated as *res-judicata* between the parties.

13. Here it would be pertinent to note that the matter of relationship, as landlord and tenant between the parties was directly and substantially a issue in the earlier suits A specific issue regarding

relationship had already been framed. All the interested persons were party to the said suit. The documents were also considered and the matter was finally decided by the civil court right upto this Court. Since, the plaintiff was also affected by the findings that tenants Sheo Lal and Sohan Lal were not direct tenant under him and they were tenant under his father Fateh Lal. Thus, it would incumbent upon him to file an appeal against the said findings.

14. As far as the contention of learned counsel for the appellant that ingredients, as envisaged in judgment (supra) are not established in the instant case are concerned, this Court does not find any merit in it. No doubt the suit in which findings were recorded with regard to the relationship and the plaintiff was a co-defendant, the said suit pertains to the year 1970 and the same explanation was made under Order 41 Rule 22 CPC in the 1976, as has been discussed in the forgoing paragraph in this judgment. But it would be appropriate to refer here the provisions contained under Order 41 rule 22 CPC , as it contained in Civil Procedure Code 1908 applicable in the year 1970, which reads as under:

“22. Upon hearing, respondent may object to decree as if the had preferred separate appeal.

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the court below, but take any cross objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within on month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within

such further time as the Appellate Court may see fit to allow.

(2) From of objection and provisions applicable thereto.

Such cross objection shall be in the form of a memorandum, and the provisions of rule1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent filed with the objection a written acknowledgement from the party who may affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served. As soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed amy nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule”.

15. A glance at the afore-said provision makes it crystal clear that in case any appeal is filed where there is an adverse finding against defendant by way of dismissal of suit and an appeal is preferred and if, that judgment and decree challenged by way of appeal and notices issued to the respondents/defendants against whom there is any findings on an issue also get an opportunity to challenge the findings by way of filing cross-objections, as per provisions referred to above contained in Order 41 Rule 22

16. Judgment and decree dated 01.10.1971 was challenged by way of filing appeal and the same was also dismissed by learned Appellate Court that too after hearing the parties vide judgment and decree dated 24.12.1975 Ex. PX/12. In that appeal Girdhari Lal was respondent No.4. Admittedly, there was a finding against him, if the suit was dismissed and he had no right to file an appeal against finding but when notice was issued to him, it was obliged upon him to prefer cross-objections and at that he had an opportunity to challenge that adverse finding. But he did not avail that opportunity.

17. Thus, the courts below have rightly concluded that the instant suit/*lis is barred* by principle of *res-judicata* and the dispute with regard to the relationship of landlord and tenant between the parties cannot be reagitated.

18. In the light of what has been discussed above, instant regular second appeal is dismissed.

(JASPAL SINGH)
JUDGE

SEPTEMBER 22, 2015
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