

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

**RSA No.87 of 2015 (O&M)
Date of decision: 22.01.2015**

Ravi Kant

... Appellant

Vs.

Chander Mohan

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Surinder Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

This regular second appeal is directed at the instance of appellant-defendant against the judgment and decree of the lower Appellate Court, whereby the suit for possession of property in dispute filed by the plaintiff/respondent was decreed.

Mr. Surinder Sharma, Advocate appearing on behalf of the appellant-defendant contends that lower Appellate Court while reversing the judgment and decree of the trial Court which had dismissed the suit of the plaintiff seeking possession of the suit property, has committed illegality much less perversity in rendering the findings and urges before this Court the present appeal involves substantial questions of law. He further contends that vide Ex.DX, Parsinni Devi - predecessor-in-interest of respondent-plaintiff also instituted a suit for possession in respect of land measuring 1 kanal 6

marlas against the appellant/defendant and the said suit was dismissed and therefore, the suit instituted by the respondent-plaintiff seeking possession of suit property measuring 11 marlas was not maintainable and hit by principles of res judicata. He further contends that respondent-plaintiff has not been able to prove that his predecessor-in-interest was the owner of the property and in view of such position, decree for suit for possession could not have been passed.

I am afraid aforementioned arguments of the learned counsel for the appellant/defendant sans merit. No such issue had been framed as to whether Parsinni Devi-predecessor-in-interest of the plaintiff-respondent had title in the property. Ex.DX pertains to the property measuring 1 kanal 6 marlas whereas, the suit in the present case had been filed for the land measuring 11 marlas. The principles of res judicata do not applicable as the matter was not principally and substantially same whereas the property in the earlier suit was 1 kanal 6 marlas and the possession in the present suit has been sought for 11 marlas, therefore, Ex.DX i.e. judgment and decree dated 01.08.2002 cannot be said to be hit by *doctrine akin* to the *res judicata*.

The lower Appellate Court found that the appellant/defendant in cross-examination admitted the site plan which gave the description of the property as 11 marlas. In view of the admission of the appellant/defendant, the lower Appellate Court

found that description of the property tallied with the description given in the sale deed.

No fault can be found with the finding rendered by the lower Appellate Court. The impugned judgment and decree of the lower Appellate Court is upheld.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 22, 2015
savita