

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

(1) RSA No. 5892 of 2014 (O&M)
Date of decision: September 7, 2015

Gurdial Singh

...Appellant

Versus

Jagjit Singh and others

...Respondents

(2) RSA No. 5915 of 2014 (O&M)

Gurdial Singh

...Appellant

Versus

Jagjit Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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?**

Present: Mr. Om Pal Sharma, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. This order shall dispose of the above tilted second appeals as they arise from the same set of facts.

2. Both the appeals are at the instance of the plaintiff who laid a claim to the estate of Kehar Singh as his son through Charanjit Kaur. The claim was with reference to the house property and the lands and his contention was that he was heir at law as well as co-parcener with his father and the a decree obtained by the 1st defendant Jagjit Singh in collusion with his father through decree dated 19.11.1991 was not valid and will not bind

him. It would appear that the plaintiff had filed three suits against Kehar Singh during his life time and Kehar Singh had also filed his written statement denying that the plaintiff was his son and setting out a case that his wife Charanjit Kaur had a sister named by Tejo. Tejo's husband was Sadhu Singh and the plaintiff was born to them. Since they had died when he was still young, he was brought up by Kehar Singh and Charanjit Kaur but was never in fact as their son. They had their own child who was the second defendant in the suit. The plaintiff was attempting to lay a claim also to the properties sold by the 1st defendant to defendants 3 and 4 on a plea that the sale by the 1st defendant on the basis of a collusive decree cannot bind him.

3. The suit was contested by the defendants on several grounds including that the suit was barred under Order 2 Rule 2 CPC in as much as the plaintiff's suit against Kehar Singh had been allowed to be dismissed for default and they had not been restored in the manner known to law. The present suit for declaratory action in respect of the very same property was not competent. The statement of Kehar Singh in the previously instituted suits filed by the plaintiff was also relied upon to state that the plaintiff was not the son of Kehar Singh to lay a claim over the properties.

4. At the trial, the plaintiff attempted to prove Kehar Singh as his parent by referring to an admission entry in the school register that described him as the son of Kehar Singh. The plaintiff also sought to examine some witnesses to say that they knew that Kehar Singh and Charanjit Kaur were their biological parents. The court rejected this evidence as too fragile and held the best possible evidence, in the absence of the birth certificate, would be to secure a DNA comparison with Charanjit

Kaur or the 2nd defendant who was the daughter admittedly born to Kehar Singh and Charanjit Kaur. The Court also found that having allowed the suit to be dismissed in default in respect of the suit property against Kehar Singh, a fresh suit must not competent. The lower Appellate Court confirmed the same.

5. Learned counsel for the appellant would argue that bar of Order 2 Rule 2 CPC would not apply. I would support such an argument but I still find that bar could operate under Order 9 Rule 9 CPC. In the suits for injunction, he was making a claim on the basis that he was the son of Kehar Singh and that the father cannot indulge in any act which can interfere with his right or suffer any decree in favour of Jagjit Singh to defeat his claim. The suit literally called for adjudication regarding his status as a son and that was the reason why Kehar Singh's statement when he was alive became relevant. If he allowed the suits to be dismissed, he could not have filed a fresh suit even for a declaratory relief, for, such relief in the present suit would have definitely require adjudication regarding the status of the plaintiff as son of Kehar Singh, an adjudication which the plaintiff did not have the courage to go through. The courts below were also justified in observing that a mere entry at the time of admission in school cannot prove the paternity when there were scientific methods of bringing the best evidence that he was the son of Kehar Singh with Charanjit Kaur. Even his plea that the subsequent suit was a declaratory action while the previously instituted suits for the bare relief of injunction can not make a difference, since even the previously instituted suits required adjudication regarding his status as Kehar Singh's son. The plaintiff has literally missed the bus of availing to himself at the trial an opportunity to bring the best evidence to

prove Kehar Singh as his father.

6. I find that there is no substantial issue for consideration in the appeals filed by the plaintiff. The second appeals are dismissed.

September 7, 2015
prem

(K.KANNAN)
JUDGE