

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**SA No. 81 of 2015**

Guniram S/o Kartikram Satnami R/o Village Tegnagarh, Tahsil-  
Mungeli District- Bilaspur (Now District Mungeli) C.G.

**---- Appellant**

**Versus**

1. Latel S/o Pilau Satnami R/o Village-Tegnagarh, Tahsil-Mungeli,  
Distt. Bilaspur (Now Distt.- Mungeli) C.G.

2. State Of Chhattisgarh Through The Collector, Bilaspur Now-  
Mungeli C.G.

3. Onkar Prasad S/o Kartikram Satnami R/o Village- Tegnagarh,  
Tahsil-Mungeli, District- Bilaspur (Now Distt. Mungeli) C.G.

**---- Respondents**

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For appellant- Shri Vipin Singh Thakur, Advocate.

For respondent No.1 – Shri C.P. Lahrey, Advocate.

For respondent No.2/State – Shri Anupam Dubey, Dy.G.A.

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order**

**25/02/2016**

1. Instant appeal is against the judgement and decree dated 29<sup>th</sup> November, 2013 passed in Civil Appeal No.100-A/11 by the Additional District Judge, Mungeli whereby the judgement and decree dated 2/04/2009 passed by the Civil Judge, Class-I, Mungeli in Civil Suit No. 91-A/2007 has been affirmed. Instant second appeal is by the plaintiff against concurrent finding of fact whereby suit was dismissed as barred under the provisions of res judicata.

2. Civil Suit bearing No.91-A/2007 was filed by Guniram and Onkar Prasad for declaration and permanent injunction in respect of the land situated at village Tegnagarh PC No.20 Tehsil Mungeli bearing different khasra Nos.69, 851, 152, 223, 246, 237, 329, 224 total admeasuring 8.36 acres. It was pleaded that such entire lands have been bequeathed in their favour by their grandmother Chandan Kunwar by will dated 23/07/1990.

3. After service of notice, the defendant filed an application under Order 7 Rule 11 of CPC wherein it was contended that earlier to that plaintiff had filed a Civil Suit No.79-A/94 on the basis of the will which was executed by Chandan Kunwar which was dismissed by the Civil Judge Class-I Mungeli on 22/08/97. Neither any appeal nor any revision was preferred against such order, therefore such order had attained finality. It was further contended that after dismissal of such civil suit, another civil suit was filed which was bearing No.8-A/2000 against Latel and Jawahar and in such civil suit, the property in respect of the present suit was also part of the suit land i.e. of land situated at village Tengnagarh. In such civil suit the issues were framed and the evidence of the plaintiff was also adduced. Subsequently, civil suit was dismissed for want of prosecution. Therefore, suit in respect of the same subject properties is barred and the plaintiff is not entitled to prosecute the present suit.

4. Trial court after evaluating the issues in the earlier plaint and the evidence came to a finding that earlier suit in respect of the suit land a civil suit was filed which was dismissed in default. Therefore, second suit is barred and eventually dismissed the instant suit against which first appeal was preferred and the first appellate court too affirmed the order, therefore this second appeal.

5. Learned counsel for the appellant would submit that both finding of the court below are completely perverse as there was no final adjudication of the earlier civil suit on merits and therefore provisions of Order 7 Rule 11 of CPC would not apply in the instant facts of this case. He therefore submits that second appeal be admitted for hearing.

6. I have perused the record, pleading and the documents. Perusal of the record would show that certified copy of the plaint in earlier Civil Suit No.8-A/2000 is on record. The copy of plaint would show that at para 4 of

plaint properties of Tengenagarh which is subject property in the instant suit was one and same. Perusal of issues framed in earlier suit on 3/05/2001 would also show that the land of Tengenagarh was also a part of the adjudication. Perusal of the earlier civil suit would show that right was claimed on the basis of registered will dated 23/07/90 which has been pleaded at para 7 of the earlier suit. Therefore, comparing with the properties of the present suit along with the pleading it would show that in earlier Civil Suit No.8-A/2000 land of the Tengenagarh was included and right was claimed on the basis of will and present suit which was bearing No.91-A/2007 the right in respect of the land of village Tengenagarh was also claimed on the basis of the same will. In earlier civil suit plaintiff has adduced his evidence and also was cross examined. Will was also proved as Ex.P-5 which includes property. In present suit 91-A/2007 same properties were claimed on the basis of the same will and the plaintiff in earlier suit were Sewa Bai (deceased) and Guni Ram and Onkar Prasad. The defedants were Latel and Jawahar. Earlier suit have been dismissed in default.

7. The present suit was again filed by Guniram and Onkar Prasad against Latel in respect of same property claiming rights on the basis of will. According to Order 9 Rule 8 of CPC plaintiff would be precluded to bring fresh suit in respect of the same cause of action. Earlier suit was filed claiming right over the property over the will in respect of the land of village Tengenagarh and other village also whereas the present suit was filed confining title to land of village Tengenagarh, therefore necessarily in the earlier suit also village Tengenagarh was included. Relief in respect of the property of village Tengenagarh was included that too was based on the basis of will. The earlier suit having been dismissed in default. Another suit in respect of the same property would be certainly barred under Order 9

Rule 8 of the CPC.

8. Consequently, the finding arrived at by both the court below cannot be faulted with when the earlier suit on the basis of the same will and the property in between the same parties was dismissed and therefore second suit would be barred.

9. In the result, after due consideration of the case file, in the opinion of this court no substantial question of law arises for consideration in this second appeal. Accordingly, the second appeal is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE