

Civil Revision No. 2946 of 2015(O&M)

Date of Decision: 2.5.2016

Kishni

--- Petitioner

versus

Bala Devi and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Kanwardeep Singh, Advocate
for the petitioner

Mr. Akshay Jindal, Advocate
for the respondents

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition has been directed against order dated 15.12.2014 passed by the Civil Judge (Junior Division), Karnal whereby suit of the petitioner /plaintiff has been dismissed being barred by principle of res judicata.

Counsel for the petitioner would submit that the learned trial court without framing an issue and providing an opportunity to adduce evidence such as pleadings of the earlier suit and the judgment passed therein has proceeded to decide the question of res judicata in a manner, not permissible in law.

Counsel for the respondents, on the contrary, has submitted that the appropriate remedy for the petitioner was to pray before the trial court to prepare a decree and thereafter to file an appeal before the first appellate court instead of filing a petition before this Court.

I have heard counsel for the parties, perused the records particularly the order impugned.

As per the settled position in law, question of suit being barred by res judicata can be decided by the court on the basis of pleadings and judgment passed in the earlier litigation, required to appreciate if the matter in issue was directly and substantially in issue in the earlier suit and has been heard and finally decided on merits. On the contrary, the learned trial court decided the question of res judicata without framing an issue and providing an opportunity to the parties to adduce evidence i.e. pleadings and judgment in the earlier suit. That being so, the order passed by the trial court cannot be allowed to sustain and accordingly set aside.

In view of what has been discussed hereinabove, the petition is allowed, the impugned order is set aside but without prejudice to the rights of the respondents/defendants to assert their claim for framing of a preliminary issue qua question of res judicata, after completing pleadings in the case.

(Rekha Mittal)
Judge

2.5.2016
PARAMJIT