

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

**CR No. 3169 of 2013 (O&M)
Date of decision: 05.01.2016**

Jagroop Singh

... Petitioner

versus

Kura Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Nandan Jindal, Advocate for the petitioner.

Ms. Puja Chopra, Advocate for the respondents.

K.Kannan, J. (ORAL)

The revision petition is against the order rejecting a plea taken by the defendant that the suit is barred under Order 2 Rule 2 and by the provisions of Section 11 CPC. The suit had been previously filed for the relief of injunction on a plea that he was in joint possession of the property alongwith his mother and brothers and that the property was ancestral in character. The defence was that the property was not ancestral and that it belonged to the defendant absolutely. The Court framed the issue of whether the plaintiff was entitled to the relief of injunction and adverted to the statement at the trial by the plaintiff that the property belonged to the mother. The Court reasoned that the plaintiff who sued for injunction would stand by his own pleadings and if it was going to be admitted that the property belong to the mother, then his plea for injunction on the basis that it was ancestral in character lost its force. Consequently, the suit was dismissed.

The present suit is filed on the basis that the property belonged to the mother and that he was entitled to share of property after her death. It is a matter of fact that the plaintiff was tried for allegedly causing the murder of his mother but he was acquitted.

The contention is that the earlier dismissal was in the context of defence that the property belonged to the defendant and the judgment of the dismissal must constitute *res judicata*.

I must observe that the principle is wrongly invoked by the defendant. *Res judicata* could be a bar in case where the suit between the party in respect of the same subject matter shall have a point for an adjudication which was directly and substantially an issue in the previous suit and decided finally. There was no issue regarding whether the property belonged to the defendant but the issue was confined to examination of the plaintiff whether the property was ancestral or not. If a fresh suit were to be filed again, contending that it was ancestral property the suit would be barred by limitation. However, if the suit is filed on the basis that the property belonged to the mother and there was also no adjudication in the previous suit, that the property did not belong to the mother, then the present suit cannot be barred by *res judicata*.

The further contention of whether the suit would be barred by Order 2 Rule 2 must be understood to be applied in a situation where the plaintiff who was capable of seeking for a particular relief even on the previous suit, failed to do so and therefore fettered himself by bringing a fresh suit on the same cause of action to secure a relief which could have been claimed in the previous suit. The source of title and the manner of relief sought in the previous suit were different namely, the claim was that it was ancestral and the relief claimed was that he was in joint possession and hence entitled to injunction while the present suit seeks for a different relief on the failure of the plaintiff to establish what he was contending for at the previous occasion. If the claim was made for a share in the property treating the property as belonging to the mother, there can be no fetter under Order 2 Rule 2. The counsel refers me to the judgment in Karas Kapahi and others Vs.

M/s Lal Chand Public

Chairtable and another, 2010 4 SCC 573 as answering the issue against the plaintiff and his father. The said judgment was with reference to the judgment of admission based under Order 12 Rule 6 and if a person obtains a judgment on an admission, the Court always retains its discretion in the matter of pronouncing its judgment and there can be no compulsion for a party to insist that the judgment shall be given. This has no application to the facts and legal position that we are examining in this case.

The order already passed is sustained and the revision petition is dismissed.

(K.KANNAN)
JUDGE

05.01.2016

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