

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3521 of 2016 (O&M)

Date of Decision: 19.05.2016

Neelam

... Petitioner(s)

Versus

Parmanand and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Ashok Tyagi, Advocate
for the petitioner(s).

Mr. Anil Kumar Sharma, Advocate
for the caveator/respondent(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 8.2.2016, passed by learned Additional Civil Judge (Senior Division), Pataudi, whereby application filed by defendants No.1 & 2 for seeking rejection of the plaint on the principles of *res judicata*, was dismissed.

Learned counsel for the petitioner *inter alia* submitted that issue of Neelam being adopted daughter of Chajju Ram had already

attained finality upto the Hon'ble Supreme Court, still the respondents are claiming their predecessor Kuldeep Singh as adopted son of Chhajju Ram. The suit before the Court below is barred by the principles of *res judicata* and the Court below ignored this fact while passing the order under challenge.

Learned counsel for the respondents submitted that Pat Ram sold his share to the respondents and share of Chhajju Ram as well. Neelam was got recorded as complete owner to the extent of share of Chhajju Ram. This fact has never been challenged and the Court below has already considered these aspects while passing the order under challenge and the present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, this Court is of the considered view that while applying the principles of *res judicata* so as to bar subsequent suit, strict conditions are to be followed as required under Section 11 CPC. Undisputedly, in the present case, Chhajju Ram was owner of the property to the extent of half share, whereas Pat Ram was owner to the extent of another half share. The respondents became owner of the suit land vide sale deed dated 12.11.1962. The sale deed in favour of Balram was never challenged in earlier suit and that is the main issue in the civil suit pending before the Court. The Court below has taken the correct view that present suit is not barred by principles of *res judicata*. Bar or restriction to the subsequent suit can be only the matter in issue which

had been directly and substantially an issue in the former suit and the parties had been litigating the same title in the Court of competent jurisdiction. But that is not the case before this Court. More so, in this case, to establish *res judicata*, question of fact shall have to be decided.

The Court below has already recorded observation in the impugned order that if during pendency of the litigation and on the basis of some material and evidence available on the file, there is some material to come to the conclusion that present civil suit is barred by principles of *res judicata* and the controversy can be looked into at that stage.

In view of above, present petition is without any merit and the same is dismissed.

(Shekher Dhawan)
Judge

May 19, 2016

"DK"