

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

**Civil Revision No.4476 of 2016 (O&M)
Date of Decision: 05.09.2016**

**Gurbax Singh (deceased) through LRs Madhusudan Singh
and anr.**

.....Petitioners

Vs

Gurinder Singh and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Deepak Arora, Advocate
for the petitioners.

Mr. M.S. Khaira, Senior Advocate with
Mr. D.S. Randhawa, Advocate and
Mr. R.S. Khaira, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J

[1]. Petitioners have assailed order dated 20.05.2016 (Annexure P-8) passed by Civil Judge (Jr. Division) Chandigarh vide which three applications i.e. application under Order 14 Rule 5(1) CPC for amendment of issues, application for summoning and attaching of the record of civil suit dated 23.03.1994 and application for examining Handwriting Expert Mr. Jassy Anand were decided.

[2]. Defendant No.1 filed an application for framing of

additional issues under Order 14 Rule 5(1) CPC on the plea of filing of improper court fee and name of defendant no.2 Tikka Jasmohinder Singh being differently shown in terms of parentage as per pleading of the plaintiff.

[3]. Plaintiff opposed the application on the ground that title of defendant No.2 had already been decided in a decision rendered by Rent Controller on 16.01.1980 wherein defendant No.2 was not held a tenant, but held to be a sub-tenant. The said judgment had already attained finality as the appeal against the same was dismissed as withdrawn. Defendant No.2 cannot take plea of ownership on the ground of *res judicata*.

[4]. Trial Court on hearing both the sides, partly accepted the application for framing of additional issues. Additional issues No.1-A, 2-A and 2-C were framed. The second application for summoning of record of civil suit dated 23.03.1994 titled as Gurbax Singh vs Anil Rishi was allowed on the premise that the suit in question was relating to the suit property and, therefore, no prejudice would be caused to anyone, if the record of said suit is summoned for the assistance of the Court. The third application for examining Handwriting Expert to examine and take photographs of alleged signatures of Gurbax Singh on the record of the case and also from the record of civil suit titled as

Gurbax Singh vs. Anil Rishi was considered to be formal in nature. Since the evidence was not led by the parties and the parties could have inspected the record and documents themselves, therefore, it was observed that there was no technical impediment against inspection of documents by Handwriting Expert Jassy Anand and for taking the photographs for such examination. The application was allowed in the aforesaid manner.

[5]. At the time of preliminary hearing on 02.08.2016, learned counsel for the petitioner assailed the impugned order only to the extent of allowing application under Section 14 Rule 5(1) CPC for framing of additional issues i.e. 1-A, 2-A and 2-C. Learned counsel for the petitioner contended that the issue No.1-A i.e. ***“Whether defendant No.2 has been finally decided to be sub-tenant by Court of Rent Controller, Chandigarh and cannot raise plea of being owner (res judicata) ? OPP”*** has already been decided in a rent petition under Section 13 of East Punjab Urban Rent Restriction Act (for short 'the Act'), titled as Gurbax Singh vs. Kanwar Vishvajit Singh vide order dated 16.01.1980, wherein status of Tikka Jasmohinder Singh was held to be of sub-tenant under Kanwar Vishvajit Singh, who was tenant under the petitioner.

[6]. In view of order passed in the aforesaid petition, it was held that ejectment of respondent No.1 Kanwar Vishvajit Singh was ordered from the demised premises and, therefore, by virtue of said ejectment, Tikka Jasmohinder Singh was also ordered to be ejected as he was occupying the premises as sub-tenant under Kanwar Vishvajit Singh.

[7]. Against the aforesaid order dated 16.01.1980, an appeal under Section 15(3) of the Act was filed before the Appellate Authority, Chandigarh by Tikka Jasmohinder Singh and the same was dismissed vide order dated 03.06.1980. The order of Rent Controller, Chandigarh directing the ejectment of Tikka Jasmohinder Singh from the premises in question i.e. H.No.86 Sector 18-A was affirmed.

[8]. In view of aforesaid, learned counsel for the petitioner submitted that the order dated 16.01.1980 passed by the Rent Controller and affirmed by the Appellate Authority vide order dated 03.06.1980, disentitled sub-tenant Tikka Jasmohinder Singh to rake up the issue once again and to seek framing of additional issues on that premise in the manner as stated above.

[9]. Learned counsel for the petitioner further submitted that the parties were not at issue in respect of issue Nos.1-A and

2-C in view of para no.4 of the written statement where factum of eviction order dated 16.01.1980 was admitted. The proposed additional issue No.2-C had already been decided in civil suit No.91 dated 03.06.1993 vide order dated 28.04.2006 passed by Civil Judge (Jr. Divn.) Chandigarh. The reference was made to the judgment dated 28.04.2006 wherein it was held that there was no evidence on record to prove that Tikka Jasmohinder Singh was son of Ravinder Pal Kaur and that he had inherited the estate of Ravinder Pal Kaur through a Will. Tikka Jasmohinder Singh had not pleaded the date, time and place of execution of the alleged Will, nor the said Will had ever been produced or proved on record. On that premise, it was concluded that the title over the house in question and its possession was never acquired by Ravinder Pal Kaur and Tikka Jasmohinder Singh had failed to prove that he was the son of Ravinder Pal Kaur and having a right, title or interest in the property in question on the basis of general power of attorney dated 25.02.1982.

[10]. On the other hand, learned counsel for the respondents contended that the concluding part of the judgment dated 28.04.2006 has to be read in its entirety wherein it was held by the Court that the suit was instituted by the State of Haryana/plaintiff alleging itself to be tenant, compelling its

landlord i.e. Tikka Jasmohinder Singh/defendant No.1 to interplead with defendant No.2 Gurbax Singh and defendant No.3-Anil Rishi, who were not claiming any interest in the suit property though defendant No.1/Tikka Jasmohinder Singh and others were rather claiming independent and adverse right, title and interest over the suit property and, therefore, suit was held not maintainable as the plaintiff State of Haryana had no cause and *locus standi* to institute the suit. The dismissal of suit would not operate as *res judicata* as it was not maintainable, therefore, question of deciding the rights viz-a-viz. additional issue No.2-C does not arise at all.

[11]. Learned counsel further contended that in the appeal filed against judgment and decree dated 28.04.2006 passed by the Civil Judge (Jr. Divn.) Chandigarh, learned counsel for the Tikka Jasmohinder Singh appellant therein made a statement for withdrawal of the appeal, reserving rights to claim right of transfer of house from Gurbax Singh as per general power of attorney-cum-agreement to sell. In the aforesaid context, learned counsel relied upon **Pawan Kumar Gupta vs. Rochiram Nagdeo, AIR 1999 SC 1823** to contend that when the suit itself was dismissed being not maintainable, the relinquishment of cause of action or any similar cause involved in the suit would not operate as *res judicata*. The withdrawal of

appeal does not give conclusive right in favour of either of the party to press for *res judicata* based on decision dated 28.04.2006 in the suit which was ultimately held not maintainable.

[12]. I have heard learned counsel for both the parties and have also perused the material on record.

[13]. So far as issue No.1-A is concerned, I found that in view of decision rendered by the Rent Controller, Chandigarh on 16.01.1980 which was upheld by the Appellate Authority on 03.06.1980, the issue was already decided between the parties. Even in the present suit for possession and recovery of damages, para No.2 of the plaint reads as under:-

“2. That the plaintiff had let out the house in dispute to one Kanwar Vishajit Singh who had sublet the same to one Tikka Jasmohinder Singh. The plaintiff filed rent petition titled as Gurbax Singh vs. Kanwar Vishvjit Singh which was decided by the court of Sh. B.C. Rajput, PCS, Rent Controller, Chandigarh vide judgment dated 16.01.1980 and ejectment order was passed in favour of the plaintiff. Copy of judgment passed by rent Controller, Chandigarh is Annexure P-2.”

[14]. In reply to above said reproduced para of the plaint, defendant No.2 took the following stand in the written statement:-

“2. That in reply to Para No.2, it is submitted that after the agreement with Smt. Ravinderpal Kaur and having received entire consideration and knowing the fact fully that Tikka Jasmohinder Singh is the son and legal heir of Smt. Ravinder Pal Kaur, plaintiff did not pursue eviction order dated 16.01.1980. The possession continued under the agreement with Smt. Ravinderpal Kaur, as Smt. Ravinderpal Kaur and Tikka Jasmohinder Singh being mother and son were living together in the said house.....”

[15]. In view of aforesaid, in considered opinion of this Court, additional issue No.1-A was not necessary to be framed. So far as issue No.2-C is concerned, since the civil suit No.91 dated 03.06.1993 was a suit on behalf of State of Haryana where the present contesting parties were impleaded as co-defendants and the suit was ultimately dismissed being not maintainable, therefore, in the light of observations made in **Pawan Kumar Gupta's** case (supra), the findings recorded in judgment and decree dated 28.04.2006, *prima facie* appear to be debatable in

the context of attracting *res judicata* or not?

[16]. In view of aforesaid, I am of the view that the trial Court can be obligated to drop issue No.1-A from consideration, at the same time issue No.2-C would survive, however nothing expressed hereinabove would be taken to be an expression on ultimate merits of the case. Trial Court will not be swayed away by any recording of fact while determining the real issues on merits.

[17]. With the aforesaid observations, this revision petition is partly accepted.

September 05, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No