

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4190 of 2011 (O&M)

Date of Decision: December 08, 2016

Bhudev Singh

...Appellant

Versus

Sumer Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.S.K.Garg Narwana, Senior Advocate with
Mr.Virat Amarnath, Advocate,
for the appellant.

Mr.Rajesh Lamba, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgments and decrees rendered by both the Courts below in civil suit seeking the following relief:-

“A decree for declaration may be passed in favour of the plaintiff and against the defendants to the effect that the relinquishment Deeds dated 1.5.2000 and 16.7.2001 are null and void and not binding upon the rights of the plaintiff. The will in question dated 15.2.2001 in respect of the ancestral land khewat/khatoni No.23/29, Rect.No.29, Killa No.1/1 (2-10) ½ (5-3), 2(6-0), 3(6-0) and (6-0), 9 (6-0), 10/1 (2-3), Rect.No.41 Killa No.13/2 (3-7), 14/1/2 (4-17), 17/2 (4-17) total measuring 54 kanals 14 marlas. The plaint is null and void and not binding upon the right of the plaintiffs as mentioned in para no.3 & 4 of the plaint. A decree for permanent injunction may also be passed in favour of the plaintiff and against the defendant no.1 & 2 from alienating the suit land to anyone by way of sale mortgage, lease, will and gift etc. the suit may be

decreed with cost.”

Mr.S.K.Garg Narwana, learned Senior Counsel assisted by Mr.Virat Amarnath, representing the appellant-plaintiff submits that the challenge in the present suit was to the relinquishment deeds dated 1.5.2000 and 16.7.2001 alleged to have been executed by Dalip Singh-defendant No.2 in favour of Sumer Singh-defendant No.1. Prior to the filing of the present suit, there had a round of litigation in the Civil Court, i.e., Civil Suit bearing No.164/1 dated 23.5.2001 seeking declaration and joint possession in respect of property described therein and challenge to the relinquishment deed dated 1.5.2000. However, during the pendency of the aforementioned suit, which resulted into passing of the judgment and decree dated 5.10.2001 Ex.DX and Ex.DY as compromise Ex.C1 was arrived at between the parties, but despite the same, the trial Court dismissed the suit. The aforementioned judgment and decree was assailed by availing the remedy under Section 96 CPC, but the same was dismissed by holding that the parties shall be at liberty to arrive at a fresh compromise. However, during the interregnum, another relinquishment deed dated 16.7.2001 was also executed in favour of respondent No.1.

He further submits that the complete pleadings of the previous suit have not seen the light of the day, particularly the written statement and, therefore, the Court ought not to have rendered the findings doctrine akin to *res judicata* while relying upon Ex.DX, Ex.DY and Ex.DZ. The previous suit was required to be different. In order to lend support with regard to the character and nature of the property, vis-a-vis the declaration, umpteen number of documentary evidence, as reflected in the judgment and decree, have been referred to, but learned counsel submits that they have not

been adverted to, therefore, the findings rendered are not only perverse but fallacious.

Mr. Rajesh Lamba, learned counsel for respondent-defendant No.2 submits in view of the findings arrived at by the Lower Appellate Court in the previous suit, the present suit was not maintainable as the same was hit by the provisions of Order 2 Rule 2 CPC as plaintiff had sought challenge to the subsequent relinquishment deed. The finding rendered by the Courts below with regard to doctrine akin to *res judicata* is squarely applicable in the present case as the previous suit was dismissed. In support of his contention, he has relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Kiran Tandon Versus Allahabad Development Authority and Anr., 2004 (3) R.C.R. (Civil) 3** as the matter directly and substantially was the same. He further submits that once the findings have already attained the finality vis-a-vis the relinquishment deed dated 1.5.2000, therefore the present suit was nothing but an act of greed and a pressure tactics and rightly so, the Courts below have declined the relief and, thus, urges this Court for dismissal of the appeal with exemplary costs.

I have heard the learned counsel for the parties and appraised the paper book.

While dealing with the objection of Mr. Rajesh Lamba and in support the judgment rendered by the Courts qua applicability of doctrine akin to *res judicata* and as well as going through the ratio decidendi culled out in **Kiran Tandon's case (supra)**, the Court was to examine all the pleadings and the judgment and decree of the Court below. The basic principle for applicability of the *res judicata* is the matter in previous

pleadings and the judgment should be directly and substantially the same, but on going through judgment Ex.DX dated 5.10.2001, I have not been able to find framing of the issues, therefore, in essence no issue was framed despite the fact that the parties were at variance. Thus, the objection of Mr.Lamba is hereby repelled.

The Courts below have remained oblivious of the aforementioned fact and have heavily relied upon the findings. In my view, the Courts below, particularly Lower Appellate Court has not discharged the obligation being the last Court of fact and law. It was incumbent upon it to refer all the documents by formulating the points of determination as per the provisions of Order 41 Rule 31 CPC. Provisions of Order 2 Rule 2 CPC would not come into play, for, the relinquishment deed dated 16.7.2001 had not seen the light of the day, in essence it was not in existence. The earlier suit was filed on 23.5.2001 and decided on 5.10.2001, though during the interregnum, release deed had been executed, but this fact was not known. There is no reference of the documentary evidence on record, in essence the an attempt had been made on behalf of the appellant to connect the property to have been fallen from the great grand-father. Be that as it may, all these factors have not been taken into consideration by the Lower Appellate Court being the last Court of fact and law, as noticed above. I am of the view that the Court ought to have looked into the entire case from all corners instead of pondering upon one point, i.e., *res judicata*.

Without commenting on the merits and de-merits and doctrine akin to *res judicata*, particularly the documentary evidence, I deem it appropriate that it is a fit case which should go back to the Lower Appellate Court for fresh adjudication of the appeal. Resultantly, the judgment and

decree of the Lower Appellate Court is hereby set-aside. The matter is remitted back to the Lower Appellate Court. It is expected that the Lower Appellate Court shall decide the appeal as expeditiously as possible, preferably within a period of six months.

The parties, through their counsel, are directed to appear before the Lower Appellate Court on 9.1.2017.

Original records of the Courts below requisitioned by this Court be sent back forthwith.

Appeal stands disposed of.

December 08, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No