

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

R.S.A. No.2230 of 2015 (O&M)

Date of decision: 16.02.2016

Rakesh Kumar

...Appellant

Versus

Sultan Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjay Mittal, Advocate for the appellant.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 10.11.2014, passed by the learned District Judge, Rewari, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 02.01.2013, passed by the learned Civil Judge, (Jr. Divn.), Rewari, (for short, the 'trial Court'), has been dismissed.

The appellant filed a suit for declaration to the effect that the sale deed No.132 dated 18.04.1995 executed by his father Sultan Singh, the defendant No.1 in favour of defendant

No.2 was without any legal necessity and as such liable to be declared null and void.

Notice of the suit was given to the defendants but the defendants did not choose to appear, so they were proceeded ex-parte.

The learned trial Court vide judgment dated 02.01.2013 dismissed the suit of the plaintiff being time barred.

Being aggrieved there-against, the appellant-plaintiff filed an appeal. The learned first appellate Court vide judgment and decree dated 10.11.2014 dismissed the appeal and upheld the judgment and decree passed by the learned trial Court. It was observed by the learned first appellate Court that appellant-plaintiff earlier filed a civil suit on the same cause of action challenging the same sale deed, which is subject matter of the present suit. That suit came to be dismissed in default under Order 9 Rule 8 CPC. However, instead of availing remedy as provided under Order 9 Rule 9 CPC, the appellant-plaintiff filed the instant suit, which the appellate Court held non-maintainable.

Heard.

Order 9 Rule 9 CPC reads as under:-

“Decree against plaintiff by default bars fresh suit.---(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.”

The Hon'ble Supreme Court in “*State of U.P and another Vs. Jagdish Saran Agrawal and others 2009(2) R.C.R.(Civil) 370*” held that as per the provisions of Order 9 Rule 9 CPC, a fresh suit in respect of the same cause of action which was involved in the earlier suit dismissed under Order 9 Rule 8 CPC, is barred. The plaintiff is precluded from bringing a fresh suit. This Court is of the opinion that the lower appellate Court has rightly non-suited the plaintiff. No question of law,

much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

16.02.2016
SN

(JITENDRA CHAUHAN)
JUDGE