

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

Regular Second Appeal No.5028 of 2014 (O&M)

Date of Decision: January 20, 2016

Birmati and others

.....APPELLANTS.

VERSUS

Nathiya and others

.....RESPONDENTS.

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

SURINDER GUPTA, J.

Heard.

The plaintiffs filed the suit seeking the relief of declaration and permanent injunction to the effect that judgment and decree dated 20th November, 1998 (passed in Civil Suit No.367 of 1998 titled as 'Neelam Devi vs. Nathia') and 17th May, 2004 (passed in Civil Suit No.107 of 1999 titled as 'Kuldeep etc. vs. Neelam etc.') were illegal and not binding on the rights of the plaintiffs-appellants.

An application was moved by defendants that the suit filed by plaintiffs-appellants is barred under Section 11 Code of Civil Procedure, inter alia pleading that in Civil Suit No.107 of 1999 titled as 'Kuldeep etc. vs. Neelam etc.' judgment and decree dated 20th November, 1998 passed in

Civil suit No.367 of 1998 titled as 'Neelam Devi vs. Nathia' were challenged. Again in this suit, plaintiffs challenged same judgment and decree raising similar plea as raised in earlier suit.

Learned Civil Judge (Senior Division), Rewari, vide order dated 1st April, 2013 dismissed the suit being barred under Section 11 CPC with the observations in para 5 as follows:-

“ That this is a suit for declaration and permanent injunction declaring the judgment and decree dated 20.11.1998 and 17.5.2004 wrong and illegal and also declaring the plaintiffs as co-owners in possession of the suit land and defendants be permanently restrained from alienating or to interfering in the peaceful possession of the plaintiffs from their share in the suit land. By filing the present application under Section 11 CPC, the applicants-defendants claimed that the present suit i.e. the civil suit No.107 of 1999 titled as Kuldeep etc. versus Neelam etc. decided on 17.5.2004, the parties were same and the suit land was also same. In the previous suit also, the judgment and decree dated 20.11.1998 was challenged. On the other hand, the respondents-plaintiffs denied it. To prove its version, the applicants-defendants placed on file the certified copy of the plaint of the previous suit titled as Kuldeep etc. versus Neelam etc. A perusal of the same reveals that the parties in that suit and present suit are same and in the previous suit, the judgment and decree dated 20.11.1998 are challenged. Admittedly, the previous suit was decided on merits and no appeal was filed against the judgment and decree dated 20.11.1998 and same attained finality. Now on the same ground, the plaintiffs-respondents cannot be further permitted to file the present suit. In the considered opinion of this court, the present suit squarely

falls within the ambit of Section 11 CPC and same is hit by principles of res judicata.”

The first Appellate Court again examined the point whether the instant suit is barred under Section 11 CPC and observed that decree dated 20th November, 1998 was challenged by the plaintiffs-appellants in the earlier suit 'Kuldeep etc. vs. Neelam etc.', as such, they stood barred to challenge that decree again by filing a fresh suit, after the dismissal of the earlier suit on merits.

Learned counsel for the appellants has argued that in the earlier suit some of the plea which have been taken in this suit, were not taken while challenging the decree dated 20th November, 1998, as such, the suit is not barred by Section 11 of CPC.

The above submission of learned counsel for the appellant carries not weight. The very object behind incorporating the provision of Section 11 CPC is to avoid multiple litigation for the same cause or subject matter. In a suit, a party is at liberty to take all the pleas available to him in support of his claim and if some plea has not been taken, the same is to be considered as given up.

On perusal of the orders passed by the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

January 20, 2016
v. saini