

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

1. RSA No.2290 of 2006 (O&M)
Date of decision : 10.10.2017

Sarabjit Singh

...Appellant

Versus

Harjinder Kaur

...Respondent

2. RSA No.2466 of 2017 (O&M)
Date of decision : 10.10.2017

Sarabjit Singh

...Appellant

Versus

Harjinder Kaur and another

...Respondents

3. RSA No.2472 of 2017 (O&M)
Date of decision : 10.10.2017

Sarabjit Singh

...Appellant

Versus

Harjinder Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. I.K. Mehta, Sr. Advocate with
Mr. R.K. Dogra, Advocate for the appellant.

Mr. Harinder Kumar Aurora, Advocate for the respondent(s).

ANIL KSHETARPAL, J.

By this judgment, I shall be disposing of three Regular Second Appeals i.e. RSA Nos.2290 of 2006, 2466 and 2472 of 2017 as all the appeals are with respect to the common property in dispute between the same parties. Pivotal issue which requires consideration by this Court is whether on discovery of fresh evidence, the plaintiff is entitled to file a fresh suit challenging the earlier judgment and decree passed against him which has become final?

RSA No.2290 of 2006 was admitted on two following substantial questions of law:-

- “1. Whether the Courts below have committed an error in holding that the judgment and decree dated 27.10.1986, does not suffer from any fraud?*
- 2. Whether a judgment and decree, affirmed by the appellate court can be challenged by filing an independent suit on the plea that it is vitiated on account of fraud?”*

BRIEF FACTS:-

Although the detailed facts have been noted by the Courts below, however, the same facts are being noticed to complete the narrative.

Mehnga Singh (since deceased) was owner of the land measuring 12 kanals and 8 marlas which he sold by a registered sale deed in favour of Sarabjit Singh-plaintiff dated 16.05.1985. Mehnga Singh thereafter sought cancellation of the sale deed dated 16.05.1985 by filing a

suit on various grounds including that in the sale deed, his signatures are appearing in Urdu although he does not know Urdu language.

The suit filed by Mehnga Singh was decreed on 27.10.1986. First appeal preferred by the plaintiff-appellant herein, was dismissed. Before the First Appellate Court, the plaintiff-appellant filed an application for permission to lead additional evidence to establish that Mehnga Singh in fact knows Urdu and has been signing in Urdu. By additional evidence, the plaintiff-appellant wanted to brought on record the documents of the Cooperative Societies and some other evidence to prove that late Mehnga Singh use to sign in Urdu script and his plea that he does not know Urdu is wrong. The application as well as appeal was dismissed. The plaintiff-appellant thereafter filed a Second Appeal which was also dismissed.

The plaintiff-appellant filed this fresh suit challenging the judgment and decree dated 27.10.1986 passed by the Sub Judge, IInd Class, Phillaur on the ground that same has been obtained against the plaintiff by the defendant by playing fraud with the Court.

The suit as well as the first appeal has been ordered to be dismissed after appreciating the evidence. The Courts below have held that the earlier judgment which has been upheld up to the High Court has become final and, therefore, mere discovery of fresh evidence cannot be accepted as a ground for filing a fresh suit. The Courts below have held that the earlier finding is final and in the subsequent suit, such finding is res-judicata as defined under Section 11 of the Code of Civil Procedure.

I have heard learned counsel for the parties at length.

Both the substantial questions of law as reproduced above are

being disposed of jointly as both the questions of law are connected. It is undisputed that in the previous suit filed by Mehnga Singh, the sale deed dated 16.05.1985 was set aside. In those proceedings, the plaintiff-appellant was party. He contested the suit. He lost in the Court of Sub Judge. During the pendency of First Appeal, the plaintiff-appellant filed an application for additional evidence. It was the plea of the plaintiff-appellant that Mehnga Singh knew Urdu. First Appeal as well as application for additional evidence was dismissed. Even Regular Second Appeal was dismissed by this Court. In these circumstances, the sale deed which has been set aside and the aforesaid decision has become final, cannot be allowed to be now reopened by filing a separate suit.

Failure to produce evidence or discovery of fresh evidence cannot be a ground to file a fresh suit and challenge the earlier judgment and decree which has become final. If this is permitted, there would be no end to the litigation. Counsel for the appellant has tried to submit that Mehnga Singh had played fraud with the Court and, therefore, the Court can reopen the entire case. He has submitted that in case of fraud with the Court, the judgment and decree obtained by playing such fraud can be even set aside in the execution or any other collateral proceedings.

I have considered the submission of the learned counsel for the appellant. However, I do not agree with the submission of the learned counsel for the appellant.

The plaintiff is now seeking to produce certain evidence to assert that Mehnga Singh use to sign in Urdu. The plaintiff-appellant was defendant in the earlier litigation and had taken the aforesaid stand.

However, the Courts below have decided against the plaintiff-appellant.

As per Section 11 of the Code of Civil Procedure, no Court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same parties. Section 11 of the Code of Civil Procedure is extracted as under:-

***“11. Res judicata.-** No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit’ between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.*

Explanation I: The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II : For the purposes of this section, the competence of a court shall be determined irrespective of any provisions as to a right of appeal from the decision of such court.

Explanation III: The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV: Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V: Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI: Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII: The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII :An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent Suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

In view of the aforesaid fact, the findings in the previous suit operate as res-judicata in the present proceedings. The arguments of learned counsel that Mehnga Singh had obtained the earlier decree on the basis of the fraud cannot be accepted because it can be at the most said to be factually incorrect plea. However, the incorrect plea cannot be equated with fraud.

In view of the aforesaid discussion, the questions of law framed at the time of the admission of the appeal are answered against the appellant.

RSA Nos.2466 and 2472 of 2017

Both these appeals are arising out of the consequential

proceedings to the previous litigation. Assistant Collector, Ist Grade, Phillaur and Collector, Jalandhar, sanctioned the mutation of the land sold by Mehnga Singh in favour of his widow Harjinder Kaur.

The plaintiff-appellant filed a suit for declaration challenging the aforesaid orders of mutation whereas Harjinder Kaur-appellant widow of Mehnga Singh filed a counter claim for possession. Both the Courts below after discussing the evidence available on the file have recorded a finding that Sarabjit Singh-plaintiff, the purchaser has no right, title or interest in the property in view of the judgment passed on 27.10.1986 which has been confirmed up to the High Court.

On the other hand, counter claim filed for possession was decreed holding that Harjinder Kaur, widow of Mehnga Singh is entitled to possession of the land in dispute.

In view of the discussion made above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

All the three appeals filed by Sarabjit Singh-appellant are dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

10.10.2017

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**