

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.4059 of 2010(O&M)
Date of Order: 26.03.2018

Abhey Ram

..Appellant

Versus

Smt. Kitabo Devi and others

..Respondents

(2) RSA No.4063 of 2010 (O&M)

Abhey Ram

..Appellant

Versus

Smt. Kitabo Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pawan Malik, Advocate,
for the appellant.

Mr. Rakesh Gupta, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

C.M.No.12089-C-2010

Allowed as prayed for.

MAIN

Plaintiff-appellant has filed two appeals, against the judgment passed by the courts below. Both the appeals are arising out of the same suit filed by the plaintiff seeking declaration that the decree dated 12.5.1966 is illegal, null and void.

Defendants initially filed a suit, claiming superior right of pre-emption being co-sharers. The suit was decreed on 12.05.1966. First appeal

was dismissed as well as regular second appeal was also dismissed on 20.04.1977. Hence, the decree for pre-emption became final. In execution of the decree, possession was also delivered to the defendants.

Plaintiff filed a fresh suit on 24.02.1996, challenging the decree passed on 12.5.1966, which was upheld upto this Court vide judgment dated 20.04.1977. It was claimed by the plaintiff that in the subsequent litigation, it was found that the defendants or their predecessors-in-interest were not be co-sharers. Hence, the plaintiff pleaded that the earlier judgment was obtained by fraud and misrepresentation.

Both the courts considered the submission. Although, the trial court relying upon the subsequent judgment, held that the predecessors of the defendants were not co-sharers, however, dismissed the suit on the ground of limitation but the first appellate court while hearing appeals filed by the plaintiff as well as by the defendants, had ordered that since the judgment passed in the previous suit have become final and therefore the subsequent suit was not maintainable. The court has also noticed that the earlier judgment passed by the court operates as resjudicata. The court has further held that the plaintiff cannot be allowed to re-open the issue, which has finally been decided, by filing a fresh suit.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

In the considered opinion of this court, the suit filed by the plaintiff was not maintainable. In the previous litigation, which resulted into decree dated 12.5.66, the court on appreciation of evidence available on the file held that the predecessor of the defendants was a co-sharer in the

land and therefore had superior right of preemption. The aforesaid judgment was challenged in the first as well as in the second appeal. The judgment became final . In execution of the decree, possession was also delivered.

In these circumstances, merely because in a different litigation, the court arrived at a conclusion that predecessor of the defendants was not co-sharer, it would not given any occasion to the plaintiff to seek setting aside of the aforesaid judgment and decree, which have become final between the parties by filing a separate suit.

In view thereof, there is no ground to interfere with the findings of fact arrived at by the courts below.

Both the regular second appeals are dismissed.

March 26, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No