

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3552 of 2013 (O&M)

Date of decision: 06.12.2018

Ran Singh and others

..... Appellants

Versus

Deep Chand

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. C.B. Goel, Advocate
for the appellants.

Ms. Bhupinder Kaur, Advocate, for
Mr. Neeraj, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Although, there is huge delay of 2710 days in re-filing the appeal, however, this Court proceed to decide the appeal on merits.

The question which arises for consideration is whether a previous judgment passed by the Court in a former suit in which the plaintiff is neither the party nor he is successor-in-interest of the parties to the previous suit, would operate as res judicata or not.

Some facts are required to be noticed.

Ram Ji Lal was the common ancestor of the parties. He had three sons namely Lahri, Deep Chand and Balmat. Raghbir is son of Lahri.

Raghbir filed a previous suit against the defendant-appellant which was

dismissed on 15.04.1996. Deep Chand is the plaintiff-respondent in the present case. Admittedly, Deep Chand was neither the party to the previous suit nor he is successor-in interest of Raghbir. Learned counsel for the appellants submitted that every one is successor-in-interest of Ram Ji Lal, therefore, Deep Chand would be bound by the previous judgment, however, this Court on careful consideration and reading of Section 11 of the Code of Civil Procedure does not subscribe to the argument of learned counsel for the appellants. Section 11 of the Code of Civil Procedure provide that a judgment passed by the Court in a former suit between the same parties or between the parties under whom they or any of them claim, litigating under the same title and in the former suit issue has been directly and substantially decided finally, then only the Court in a subsequent suit shall be debarred from examining the aforesaid issue once again. As noticed above, in the present case, Deep Chand, who no doubt is uncle of Raghbir-plaintiff in the previous suit, does not claim the title under Raghbir.

Both the Courts after examining the evidence have found that the suit property is part of khasra No.97. It has been noticed by the Courts at the time of settlement, the land comprised in khasra No.68 and 94 was merged and a single number was assigned i.e. Khasra No.168. In consolidation of holdings, old khasra No.168 was changed to khasra No.97. Still further, the Court appointed a Local Commissioner, Kitab Singh, a revenue official, Kanungo who went to the spot and demarcated the area. He also stated that in the year 1909, the land comprised in khasra Nos.68 and 94 was merged and converted into new khasra No.168 which went on to become khasra No.97. Still further, the witness who was examined by the defendant-Daya Nand had admitted that son of the plaintiff has

constructed the house in part of the property in dispute. Still further, it will be noticed that the defendants have failed to prove that they have raised any construction on the plot in dispute. Their entire case is that they have been putting their cow dung cakes and storing their dry fodder for cattles. No doubt, learned counsel for the appellants while drawing attention of the Court to the lay-out plan produced in the previous suit and in the present suit has submitted that the site plan is same but once the plaintiff-respondent was not party to the earlier litigation and he is not claiming title under Raghbir son of Lahri, therefore, this Court does not find any good ground to interfere.

All the pending miscellaneous applications, if any, shall stand disposed of accordingly.

Appeal is dismissed.

06.12.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No