

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

RSA No. 250 of 2015 (O&M)
Date of decision : March 07, 2018

Kapoor Chand, since deceased, through his L.Rs

..... Appellant

v.

Darbara Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. DD Gupta, Advocate
for the appellant.

Ajay Tewari, J (Oral)

C.M No.3496 C of 2018

This is an application under Order 41 Rule 27 read with Section 151 of the C.P.C for permission to lead additional evidence in the form of Jamabandis from 1969 onwards and certain other documents. All these documents were available to the appellant at the time of the trial. No explanation has been given why these documents are to be placed on record now. Consequently, this application is dismissed.

RSA No.250 of 2015

Pursuant to the order dated 20.07.2017, costs have been paid.

This appeal has been filed against the judgment of the lower appellate Court dismissing an appeal filed by the appellant, since deceased, now represented by his L.Rs.

The respondents had filed a suit for possession of land which was held by the appellant, and for recovery of mesne profits for unauthorized use and occupation of the said land. The trial Court decreed the suit for possession but declined the relief of mesne profits. Both parties filed appeals. The appeal filed by the appellant was dismissed while that of the respondents was allowed. The appellant challenged the decree of possession granted in favour of the respondents in the present appeal. The case of the respondents was that the land in dispute had been allotted to four persons in the year 1996. At that time, the appellant had filed a civil suit claiming two reliefs; 1) permanent injunction against dis-possession on the ground that he was a tenant, and 2) a declaration that the allotment was illegal. That litigation continued up to this Court and ultimately by judgment Ex.P13 this Court held that the appellant was in unauthorized possession and not in possession as a tenant, and qua the second relief, the Civil Court had no jurisdiction. However, the limited plea of the appellant was accepted viz that he could not be dis-possessioned except in due course of law. As per the respondents, they had filed the present suit in view of the protection given by this Court by judgment, Ex.P13. Even in this suit, the stand taken by the appellant was that in fact he was a tenant over the land in dispute and rather, he had a preferential right for allotment over the respondents on that score.

Both the Courts below held that the findings in the previous suit (which culminated in the judgment of this Court Ex.P13) wherein it was held that the appellant was in unauthorized possession were binding and res judicata, and consequently decreed the suit.

Counsel for the appellant has argued that in fact there is a

subsequent judgment of the Supreme Court as per which the appellant is still entitled to be treated as a tenant. In my opinion, any such judgment would be of no avail. Had the appellant challenged the judgment Ex.P13 and the controversy been still alive, a subsequent judgment may have helped them but the fact of the matter is that the judgment in the previous suit Ex.P13 has attained finality. The finding that the appellant is in unauthorized occupation comes within the four corners of Section 11 of the CPC because it was a previous suit between the same parties (or their predecessors-in-interest) wherein both the parties were claiming under the same title as they are claiming in the present suit.

Counsel for the appellant has vehemently argued that this is a very hard case. As per him, the appellant is actually entitled for allotment since he is in possession over the land for the last five decades and now his third generation has put in blood and sweat into this land and the dismissal of this appeal would be extremely iniquitous.

I am afraid the argument of equity cannot prevail against doctrines relating to public policy like res judicata and limitation. These doctrines are a matter of larger public policy and will always outweigh the individual inequity which may be foisted upon individual litigants but that is the position in law. Consequently, finding no merit this appeal is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

March 07, 2018
'kk'

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No

