

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

RSA No.4262 of 2014 (O&M)

Date of decision : 25.04.2018

Jagtar Singh and others

...Appellants

Versus

Gurmit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harkirat Singh Sandhu, Advocate for the appellants.

Mr. Ashok Giri, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court.

The predecessor of plaintiff No.1 i.e. Sher Singh filed a suit on 03.02.1996 against the defendants seeking declaration that he is owner in possession of the land measuring 1 kanals and 5 marlas alongwith defendant Nos.5 to 9 who are plaintiff Nos.2 to 6 in the present litigation. The aforesaid suit was decreed on 27.05.1998.

The plaintiff filed a fresh suit alleging that the judgment and decree passed by the Civil Court in the year 1998 has not been implemented in the revenue record and their possession has also been threatened.

Learned trial Court relied upon the previous judgment inter parties, decreed the suit. However, the learned First Appellate Court has

chosen to reverse the judgment and decree passed by the trial Court only on the ground that on account of the previous judgment, subsequent suit is not maintainable being barred by res judicata.

In the considered opinion of this Court, the question which needs determination is whether a subsequent suit filed by the plaintiff claiming that the previous judgment in his favour is not being implemented and his possession is being threatened, can be held to be barred by the Rule of Res judicata.

Rule of res judicata is provided under Section 11 of the Code of Civil Procedure, which 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 a 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”

Rule of res judicata has been incorporated so as to avoid the subsequent suits when in a previous litigation, the matter is directly and substantially has been answered. In the present case, previous litigation had been decided in favour of the plaintiffs. The plaintiffs had relied upon the aforesaid judgment and decree dated 27.05.1998 and prayed that since the revenue officials are not incorporating the names in the revenue record and the defendants have started proclaiming their rights over the suit property, therefore, the suit is being filed.

Such suit cannot be held to be barred by the Rule of res judicata. The plaintiffs have already been declared owner in possession. Although, the plaintiffs have prayed for once again decree for declaration, however, such relief sought is only superfluous in view of the earlier judgment passed on 27.05.1998. However, the plaintiffs would at least be entitled to the relief of injunction so as to protect their possession. They are also entitled to the direction to the revenue authorities to carry out the necessary correction.

In view thereof, the question of law framed above is answered in favour of the appellants.

Judgment and decree passed by the learned First Appellate Court is set aside. The suit of the plaintiffs is decreed to the extent that the plaintiffs would be entitled to the relief of permanent injunction restraining the defendants from interfering in their possession and the Revenue Authorities are directed to carry out the necessary corrections as held in the decree dated 27.05.1998.

Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

25.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No