

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-14550-CII-2017 in/and
CR No.2479 of 2015 (O&M)
Date of Decision:28.05.2019

Surinder Mohan [deceased] by LR

...Petitioner

versus

Baldev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Amar Vivek, Advocate
for the petitioner.

Mr. Dipender Singh Kamra, Advocate,
for the respondents.

Amol Rattan Singh, J.

1. By this petition, the petitioner challenges the order of the learned trial court dated March 03, 2015, by which his application seeking rejection of the plaint in the suit filed by respondent no.1 herein has been dismissed. Vide the said suit, the respondent-plaintiff sought a declaration to the effect that the “rent agreement purporting to be dated 16.10.1989 executed between defendant No.1 and 5, and witnessed by defendant No.1 and 3, is false fictitious and forged document upon which the signatures of defendant Ajay Kumar have been forged by the other defendants, maliciously and that the said document is unenforceable and ineffective against the plaintiff”.

Further, consequential relief of permanent injunction, restraining the defendants in the suit (including the petitioner herein) from enforcing the said rent agreement 'against the rights of the plaintiff', had also been sought.

The application filed by the petitioner, seeking rejection of the

plaint, is essentially on the ground that the validity and genuineness of the aforesaid agreement dated 16.10.1989 had already been settled in a previous civil suit instituted by the petitioner herein, bearing CS no.455 of 1993, with that judgment having become final and the respondent-plaintiff being very much a party to the said suit as a defendant therein, with him even having filed an appeal against the judgment of the trial court in that *lis*.

During the pendency of this petition, the petitioner is stated to have died, with an application (CM-14550-CII-2017) having been filed by one Nisha, contending that she is the daughter of the petitioner and that therefore she be allowed to pursue the petition as his legal representative.

Upon that application having been filed, Mr. Kamra, learned counsel for respondent no.1, had seriously objected to it being allowed, on the ground that as a matter of fact the late petitioner had testified to the effect that he had no children and therefore the petition cannot be perused by the applicant.

Though that issue had come up for hearing on various dates time and again, eventually yesterday, i.e. May 27, 2019, this court had put a query to learned counsel for the respondents, to address arguments on how, in the face of Explanation I to Section 11 of the Code of Civil Procedure, 1908, the suit instituted by the respondent-plaintiff in the current *lis*, would not be actually barred on the principle of *res judicata*, and therefore why the application under Order 7 Rule 11 CPC filed by the petitioner before the trial court, should not actually have been accepted.

2. In response to what this court had observed in its order passed yesterday, i.e. May 27, 2019, Mr. Kamra has first pointed to clause (d) contained in Rule 11 of Order 7 of the Code, to submit that on an application

moved under the said provision, a plaint can be rejected “where the suit appears from the statement in the plaint to be barred by any law”.

His contention therefore is that whether or not the suit in the current *lis* is barred on the principle of *res judicata* as contained in Section 11 of the Code, is not to be seen on any other parameter, other than any recital/statement in the suit filed by the plaintiff; and consequently, even if any matter has been adjudicated upon in a previous *lis* between the same parties (which also he denies on various grounds), that is not a criterion that can be applied by the court while considering an application under Order 7 Rule 11 (d).

3. He further submits that after issue no.1-A had been framed in the previous *lis* between the parties, i.e. Civil Suit no.455 of 1993 (such suit having been filed by the present petitioner arraigning the respondent herein as defendant no.2), the onus to prove that issue had been eventually cast only upon defendant no.1 in that suit, vide an order of the trial court (in that *lis*) passed on 09.08.2000, thereby 'absolving the respondent' herein from participating in that issue, and consequently, any finding recorded thereon would not be binding on the respondent on the principle of *res judicata*, to preclude him from raising it in a suit already instituted by him earlier, i.e. the suit in the present *lis*.

[It is to be specifically noticed here that Civil Suit no.75/2000 in the present *lis* was so filed by the respondent-plaintiff on 22.04.2000, whereas the suit earlier filed by the petitioner herein, i.e. Civil Suit no.455/1993, though obviously filed in that year, was decreed in favour of the petitioner (thereby directing ejectment of the defendants therein, including respondents no.1 and 2 in this petition), on 17.05.2001. Thus, by the time of

the decision of the suit filed by the petitioner, the respondent-plaintiff had already instituted his suit in the current *lis*, seeking that the rent agreement/note dated 16.10.1989 be declared to be null and void and not binding upon him, had already been instituted].

4. He next submits that this court, while adjudicating upon Civil Revision nos.1957 of 2003 and 3499 of 2004 (arising from an order passed by the trial court in this very *lis*), having held that the issue of *res judicata* cannot be treated to be a preliminary issue, the petitioner-defendant cannot be allowed to circumvent that observation/ direction, by filing an application under Order 7 Rule 11 CPC, again stating therein that the suit of the respondent-plaintiff is barred on that very same principle, i.e. *res judicata*.

5. He further submits that in any case, if the contention of the petitioner is that the respondent herein is barred on that principle, the directions issued by this court in the aforesaid revision petitions would operate as *res judicata* on the petitioner, debarring him from raising that issue even by means of an application filed under Order 7 Rule 11 CPC, as also from filing the present revision petition.

6. Mr. Amar Vivek, learned counsel for the petitioner, on the other hand has submitted that though undoubtedly this court had passed the said direction in the aforesaid civil revisions, yet that would not amount to stating that the petitioner-defendant was debarred from even exercising his right under Order 7 Rule 11 CPC seeking rejection of the plaint on a glaringly obvious ground to the effect that once the agreement dated 16.10.1989 had been specifically held to be a genuine document by the 1st appellate court in the previous *lis*, on an appeal filed by respondent no.1 herein, i.e. the plaintiff in the current *lis*, rejection of the plaint would be required at the threshold

itself.

Consequently, he submits that the impugned order is not sustainable and the plaint in the suit filed by the respondent herein has to be rejected even on a perusal of the prayer made in the plaint, with him actually and practically seeking that the finding in the previous *lis* between the same parties be nullified (even though such finding had become final in that *lis*).

7. Having considered the matter, in the opinion of this court, as regards Mr. Kamras' contention that issue no.1-A, as was framed in the previous *lis*, being an issue available to him to raise again in the present suit, I cannot agree with that contention, because whether that issue was decided correctly or not, is not to be gone into by this court in the present *lis*, the decree in the previous suit having become final up to the last court, specifically the fact that that issue no.1-A in that *lis* was raised by the respondent herein, in his appeal filed in that *lis* before the 1st appellate court therein.

8. Issue no.1-A in the previous *lis* can be seen from the copy of the judgment passed by the learned 1st appellate court in that *lis* (Additional District Judge, Chandigarh), as has been annexed as Annexure P-5 with the present petition. The said issue reads as follows:-

“1A Whether rent note dated 16.10.1989 is bogus, fictitious and fabricated document? OPD”

On that issue, after due discussion on it, including the allegation of the present respondent no.1 that the said agreement was a forged and fabricated document (reference paragraph 26 of that judgment), the finding of that court was as follows:-

“40. As a result of my aforesaid discussion and conclusion findings on issues No.1, 2, 3A and 3B which include the

(It is not in dispute that the document dated 16.10.1989, though referred to as a rent note in the previous suit and has been referred to as a rent agreement in the prayer clause of the suit in the present *lis*, is the same document).

9. Therefore, in my opinion, even if any aspect pertaining to the said issue, or any other issue framed in that suit, was a source of aggrievment with the respondent (or any party to that *lis*), it already having been settled therein, it cannot be raised again in any other *lis*, whether such suit is instituted prior or after the decision in that *lis*, even in terms of Explanations I, III, IV & V, to Section 11 of the Code of Civil Procedure, 1908, the relevant parts of which read as follows:-

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 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.

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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.

XXXXX

XXXXX

XXXXX”

Very obviously therefore, on the touchstone of the aforesaid provisions, any question on an issue already decided finally in Civil Suit no.455 of 1993, cannot be raised in a subsequent *lis* between the same parties.

10. The next question then is, as to whether the petitioner in the present *lis*, in view of the order passed by this court in Civil Revision nos.1957 of 2003 and 3499 of 2004, could have raised the issue of *res judicata* again, on an application filed under Order 7 Rule 11 CPC, with this court having held vide the said order, that the said issue is not a preliminary issue and that it be decided alongwith the other issues within 6 months, by the trial court.

11. In my opinion, though Mr. Kamra may be right in stating that the said question is being raised on an application filed under Order 7 Rule 11 CPC, simply in a “new packaging” given by the petitioner, yet it would not be possible for this court to close its eyes to the fact that the plaintiff has a right to seek rejection of a plaint on any of the grounds stated in under Order 7 Rule 11 of the CPC, which reads as follows:-

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint

is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate];

[(f) where the plaintiff fails to comply with the provisions of Rule 9];

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

Thus clause (d) thereof postulates that a plaint can be rejected where the suit itself appears from the statement in the plaint to be barred by any law.

12. In the present case, very obviously and clearly, as has been shown by learned counsel for the petitioner from the plaint in the suit filed by the respondent herein, the prayer clause reads as follows:-

“It is therefore, prayed that a decree with costs be passed for Declaration to the effect that the Rent Agreement purporting to be dated 16.-10-1989 executed between defendant no.1 and 5, and witnessed by Defendant No.2 and 3 is false fictitious and forged document upon which the signatures of defendant Ajay Kumar have been forged by the other defendants, maliciously, and that the said document is unenforceable and ineffective against the Plaintiff; And also a decree be passed in favour of the Plaintiff for Permanent Injunction restraining the defendants

from enforcing the said Rent agreement of 16-10-1989 against the rights of the Plaintiff in any manner, in respect of PUDA house H.M-14, Phase 2, Mohali, or any other appropriate relief be kindly granted.”

Similarly, in paragraph 2 of the plaint, it has been stated that the signatures on the agreement dated 16.10.1989 were forged at Chandigarh by defendant no.4 in the suit (proforma respondent no.5 in the present petition), as a result of a conspiracy between defendants no.1 to 4.

Hence, even on a plain reading of the statement in the plaint, the contention seen to be raised is that the agreement dated 16.10.1989 is a forged document, with the prayer being that the said document be declared to be null and void and not binding on the plaintiff (as stated many times earlier hereinabove).

As also already noticed in paragraph 8 of this judgment hereinabove, issue no.1A (as reproduced by the learned 1st appellate court in its judgment in the previous suit, i.e. Civil Suit no.455 of 1993 instituted by the present petitioner against both the respondents in this petition), was whether the rent note dated 16.10.1989 was a bogus, fictitious and fabricated document; and the finding of that court in the present respondent-plaintiffs' first appeal, was to the effect that though issue no.1A was not specifically mentioned to record a finding on that issue by the trial court, yet, it had discussed issues no.1, 2, 3A and 3B collectively and the findings (of the trial court) were on all the aforesaid issues, included what was contained in issue no.1A.

Thus it was finally held by the appellate court that it was affirming those findings, including on issue no.1A, as recorded by the trial court. (Reference may be had to paragraph 32 of the judgment of the

appellate court in that *lis*, a copy of the said judgment being Annexure P-5 with the present petition).

13. In this context, Rule 5 of Order 20 of the Code of Civil Procedure may be referred to:-

“5. **Court to state its decision on each issue.-** In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.”

Thus, even if a specific issue has not been mentioned as being decided by a court in its judgment, but the said issue is covered in its discussion on other issues and is actually adjudicated upon while deciding those issues, it need not be shown to be separately decided, in such a case.

In the present context, that aspect would also be not required to be discussed in detail, in view of the fact that in the previous suit decided (CS no.455 of 1993) the appellate court in that case had specifically referred to and reproduced issue no.1A, and had specifically adjudicated upon it, with that judgment admittedly having become final upto the Supreme Court.

14. It may also be observed that even if any aspect of issue no.1-A as was framed in the previous *lis*, i.e Civil Suit no.455 of 1993, was not specifically adjudicated upon in that *lis*, with possibly the respondent herein not having even touched upon it in his appeals, in the opinion of this court, he would still be debarred from raising it in a subsequent *lis* on the principle contained under Order 2 Rule 2 of the CPC, as also in terms of Explanation IV to Section 11 thereof.

15. Consequently, I would find no ground to hold that a second suit instituted by the defendant in the first *lis* was maintainable, raising an issue

which had already been decided in the previous *lis* to which he was a party.

Though, undoubtedly, the law settled on the issue is that an application filed under the provisions of Order 7 Rule 11 of the CPC would not normally be rejected on a principle of *res judicata* being raised, such a plea often being a mixed question of law and fact, however, in the present case, where the second suit is obviously and wholly one seeking a declaration on an issue already clearly settled in the previous *lis* between the same parties, and the relief claimed in the second suit to that effect is very clearly visible from a plain reading of the plaint itself, then I would hold that the application has to be accepted and the plaint on that ground alone, despite the fact that previous revisions filed by the present petitioner have been dismissed by this court.

16. On that argument of Mr. Kamra, it is first to be noticed that CR no.1957 of of 2003 was one that challenged the order of the learned Civil Judge, by which an application filed by the petitioner-defendant, for treating issue no.3 (on *res judicata*) as a preliminary issue, had been declined.

CR no.3499 of 2004 was one in which the present petitioner had prayed that this court, in exercise of its plenary and extraordinary jurisdiction (under Article 227 of the Constitution), should in fact dismiss the suit filed by the respondent-plaintiff on the ground of *res judicata* as an identical issue had already been decided in the previous civil suit between the parties.

This court (co-ordinate Bench), in a judgment dated August 14, 2013 (Annexure P-9 with the petition), had first noticed a contention that in a previous petition bearing CR no.6225 of 2002 (decided on 16.04.2009) it had been held that respondent no.1 herein (plaintiff in the suit) was a vexatious litigant.

Thereafter, upon citing various judgments of the Supreme Court, it was held that the issue of *res judicata* cannot be disposed of as a preliminary issue it being a mixed question of law and fact, and therefore it should be decided at the time of consideration of all the issues.

17. Seeing the above, though Mr. Kamra would be absolutely correct in stating that this court already having held that *res judicata* be not decided as a preliminary issue, this court would not interfere with that finding of a co-ordinate Bench, and perhaps while allowing this petition in court, I did not look at that judgment in detail, yet even on looking at the matter in further detail at the time that the judgment has come up to me for signing, in my opinion, when the suit is clearly barred on the principle of *res judicata* on a plain reading of the text in the plaint itself, as already discussed in detail hereinabove, even that finding by this court in a previous revision petition, which was not one arising out of any application filed under Order 7 Rule 11, cannot oust the right of the plaintiff for rejection of a plaint under that provision (Order 7 Rule 11) when it is so obvious to the court that the second suit is clearly barred by the principle of *res judicata*.

18. Therefore, even though Mr. Kamra has vehemently argued that the finding on issue no.1A in the previous *lis* is wholly perverse and in fact the respondent herein was not even given a chance to disprove the document before the trial court in that *lis*, yet, he having specifically raised that issue before the appellate court in that *lis*, then, whether or not such finding is perverse or wholly correct, cannot be gone into in a subsequent *lis* between the same parties, this court not being vested with any jurisdiction similar to what is contained in Article 142 of the Constitution, and the trial court obviously being bound by what s contained in Order 7 Rule 11 of the Code of

Civil Procedure.

19. Having held that, coming then to the question of whether the application filed by one Nisha, seeking to be impleaded as the legal representative of the petitioner, is to be allowed or rejected.

In that context, as already noticed at the outset, Mr. Kamra has raised serious objections to it being allowed, on the ground that the late petitioner (Surinder Mohan), had specifically testified, as PW2 in the suit instituted by him (CS no.455/1993), that he had no children. The testimony has also been taken on record in the present petition upon an application having been filed by learned counsel for the respondent-plaintiff for that purpose, this court having directed him to do so, upon an oral contention raised by him earlier.

However, I find it unnecessary to even go into that issue now, having held that the plaint of the respondent-plaintiff is to be rejected on the principle of *res judicata* alone.

Thus once the plaint itself is to be rejected, the question of any legal heirs of any of the defendants therein (the late petitioner being defendant no.1), for the purpose of defending the suit or pursuing this petition, would cease to arise in the first place. Consequently, that question is not being looked into by this court at all, it having become unnecessary.

No doubt, Rule 1 of Order 22 of the CPC stipulates that the death of a party to the suit would not result in abatement of the suit, if the right to sue survives, and where only one of several plaintiffs or defendants dies, with a right to sue surviving to the remaining plaintiffs or against the surviving defendants, the suit would still proceed ahead; yet, to state the obvious, the suit itself having been held to be not maintainable by this court,

that question naturally does not arise.

20. It is to be especially noticed that Mr. Kamra has also specifically contended that learned counsel for the petitioner in the present *lis* has himself acquired an interest in the suit property and therefore “all is not well” as regards these proceedings. However, I would find myself unable to even go into that issue, once the suit itself, instituted by the respondent herein, is found to be clearly barred on the principle of *res judicata*.

21. Mr. Kamra has also very vehemently contended that the respondent-plaintiff has suffered unnecessarily, he already having paid almost the entire consideration for the suit property and having also been given possession of the same, with only a very marginal amount of money still to be paid by him on execution and registration of the sale deed in his favour; yet I find myself unable to even go into any such question of alleged wrongful suffering, once the alleged cause of such suffering is admittedly on account of issues arising from the same suit property as was subject matter of the previous *lis*, with all such issues having been fully decided in that *lis* right upto the Supreme Court.

22. Consequently, keeping in view the entire discussion, this petition is allowed, with the impugned order set aside and the application of the petitioner under Order 7 Rule 11 of the CPC also allowed, thereby rejecting the plaint filed by the respondent in his suit, on the principle of *res judicata* alone.

May 28, 2019
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(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes