

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

SAO-17-2019 (O&M)

Date of Decision: 17.07.2019

Jaspreet Singh

.... Appellant

Versus

Kashmir Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Rishu Mahajan, Advocate for the appellant.

RAMENDRA JAIN, J. (ORAL)

Defendant-tenant has filed this second appeal, laying challenge to the judgment of Appellate Court dated 03.01.2019, whereby, it setting aside order of the trial Court dated 08.08.2017 (Annexure P-3), dismissing the suit of respondent-plaintiff applying the doctrine of *res judicata*, directed the trial Court to decide the suit afresh on merits.

Briefly, respondent-plaintiff claiming himself to be the landlord of demised premises situated in the area of village Nag Naven, Tehsil and District Amritsar, filed a suit for possession, *mesne profits* and permanent injunction against the appellant-defendant. During its pendency, appellant-defendant filed an application under Section 11 CPC for dismissal of suit and from restraining the respondent-plaintiff to dispossess him from the demised premises, on the ground that previously

instituted suit bearing No. 1984/2008 by him titled as 'Jaspreet Singh Vs. Kashmir Singh', was decreed on 22.10.2014 against which respondent-plaintiff went in appeal, but remained un-successful as the same was dismissed in default, vide order dated 13.07.2015. That apart, similar suit for possession qua the demised premises filed by the respondent-plaintiff, was dismissed vide judgment and decree dated 16.03.2015 (Annexure P-4), which attained finality, after dismissal of his appeal vide judgment and decree dated 27.11.2015 (Annexure P-5). Therefore, the present subsequent suit having the same subject matter which had already been substantially and materially adjudicated upon by the both the Courts below, vide judgments and decrees (Annexure P-4 and P-5, respectively), was barred by the principle of *res judicata*. The trial Court after hearing both the sides accepted the aforesaid application of the appellant-defendant vide order dated 08.08.2017 and dismissed the suit of respondent-plaintiff in the manner as narrated above.

Being aggrieved, respondent-plaintiff approached the Appellate Court, who vide impugned judgment dated 03.01.2019 accepting his appeal, remanded the case to the trial Court, with a direction to decide the suit afresh, on merits.

Learned counsel for the appellant *inter alia* contends that earlier, suit filed by the appellant-defendant against respondent-plaintiff for restraining him from evicting the appellant from the demised premises illegally and forcibly was decreed. Similarly, suit filed by respondent-plaintiff to dispossess the appellant-defendant from the demised premises

with the same subject matter raising similar issues had also been dismissed. Therefore, the present suit was rightly dismissed by the trial Court. The Appellate Court has illegally remanded the case to the trial Court.

Having given thoughtful consideration to the submissions of learned counsel for the appellant, this Court finds the instant second appeal completely devoid of any merit for the reasons to follow:

The present suit filed by respondent-plaintiff for possession, *mesne profits* and permanent injunction is based on his title, whereas cause of action in earlier suit was altogether different, inasmuch as, in that suit it was pleaded that the appellant-defendant was inducted as tenant on monthly rent of ₹500/- by one Kuldeep Kaur on 16.05.2003. Therefore, the judgment in the previous suit was not relevant for the purpose of deciding the instant suit.

Section 11 CPC, only applies where a point in issue involved in the suit directly and substantially has already been decided. In the present suit, respondent-plaintiff claimed that appellant-defendant was trespassing the demised premises, whereas in the earlier suit filed by him he had treated him as tenant under one Kuldeep Kaur. Therefore, it is apparent on record that the subject matter and the issue involved in both the suits was altogether different. Therefore, this Court is completely in agreement with the findings of lower Appellate Court that doctrine of *res judicata* being a question of law, can only be decided by adducing evidence from both the sides. The lower Appellate Court also

considered the fact that issues had already been framed by the trial Court, therefore, it ought to have decided the suit on merits, instead of dismissing the same at preliminary stage.

In view of discussion made above, the instant second appeal, being meritless, is dismissed.

July 17, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No