

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 2650 of 2019(O&M)
Date of Decision: 28.5.2019**

Lekh Ram Sharma

---Appellant

versus

Subhash Chand and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Kul Bhushan Sharma, Advocate
for the appellant**

Rekha Mittal, J.

CM No. 7281-C of 2019

Prayer in this application is for condoning delay of 29 days
in refiling the appeal.

Heard.

Allowed as prayed for. Delay of 29 days in refiling the
appeal stands condoned.

Disposed of accordingly.

RSA No. 2650 of 2019

Challenge in the present appeal has been directed against
concurrent findings recorded by the courts whereby suit for possession
by way of partition with consequential relief of permanent injunction
filed by the appellant was partly decreed to the effect that the appellant
is entitle to 1/11th share in the suit property of Deep Chand and parties
to the suit who have been allotted shares are entitle to get separate

possession by way of partition of the suit property, vide judgment and decree dated 31.3.2017 passed by the trial court. The appeal preferred by the plaintiff-appellant was dismissed by the Additional District Judge, Palwal on 26.11.2018.

Counsel for the appellant would argue that Deep Chand had three wives. Firstly, he married Smt. Gyaso and after her death, he married Smt. Murti. There was krevam marriage of Deep Chand and Smt. Prem and out of the said wedlock, defendants Nos. 6 to 9 were born. Deep Chand died in the year 1996 and mutation No. 2985 was sanctioned in favour of three wives of Deep Chand i.e. Smt. Gyaso, Smt. Murti and Smt. Prem in equal shares. Subhash Chand-defendant No. 1 filed suit titled “Subhash Chand vs. Sukhbir and others” to challenge mutation No. 2985 but the same was dismissed by the trial court vide judgment and decree dated 23.4.2005 (Annexure A-1) and the same has attained finality. It is argued with vehemence that as the judgment passed in civil suit titled “Subhash Chand vs. Sukhbir and others” would constitute res judicata in the present case, appellant being the son of Smt. Gyaso is entitled to 1/6th share in estate left behind by Deep Chand as Smt. Gyaso left behind two sons namely Deshraj predecessor in interest of defendants No. 10 and 11 and the appellant-plaintiff. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Neelamma and others vs. Sarojamma and others 2006(9) SCC 612, Bharatha Matha and another vs. R.**

Vijaya Renganathan and others 2010(3) RCR (Civil) 252 and Subramanian Swamy and another vs. State of Tamil Nadu and others AIR 2015 (SC)460. Reference has also been made to judgments of this Court **Ujagar Singh vs. Sham Singh and others AIR 1979 (Punjab) 12, Harpal and others vs. Ram Piari and others 1981 PLJ 492** and judgment of the Delhi High Court **Aizaz Alam vs. Union of India 2006 Legal Eagle (Del) 372.**

Another submission made by counsel is that suit land was ancestral coparcenary property in the hands of Sh. Deep Chand as such, sons of Deep Chand born out of his legal wedlock with Smt. Gyaso and Murti would be entitle to a share in the coparcenary property in the hands of Deep Chand and accordingly the shares determined by the courts are liable to be modified.

So far as contention of the appellant with regard to suit land in the hands of Deep Chand to be ancestral coparcenary property, indisputably, no evidence was adduced by the appellant to substantiate his plea in this regard. Every property in the hands of a holder is deemed to be self-acquired property unless proved otherwise. Equally settled is that nature of the property cannot be determined on the basis of admission made by the parties. In the given circumstances, appellant cannot derive any advantage to his contention from the alleged admission made by the contesting defendants with regard to nature of suit property. As such, findings of the courts rejecting plea of

the appellant with regard to ancestral coparcenary nature of suit property are affirmed.

This brings the court to the primary question qua principal of res judicata being attracted in view of judgment dated 23.4.2005 (Annexure A-1) passed in civil suit No. 646 instituted on 27.11.2003 and decided by the Civil Judge (Junior Division), Palwal wherein Subhash Chand son of Deep Chand challenged mutation No. 2985 being wrongly sanctioned and claiming more rights in land measuring 68 kanal 6 marlas situated in village Asaoti, Tehsil Palwal left behind by late Sh. Deep Chand son of Ram Swaroop.

Both the courts have consistently held that judgment in the said suit would not constitute res judicata when examined in the light of relevant provisions of Section 11 of the Code of Civil Procedure (in short “the Code”). I have gone through operative part of the judgment (Annexure A-1) and a relevant extract therefrom, reads as follows:-

“After going through the arguments advanced by the Ld. Counsel for the parties, I am of the considered view that by virtue of this suit, plaintiff has sought declaration that mutation No. 2985 sanctioned on 3.7.1996 be declared as illegal, null and void and same is not binding on the rights of the plaintiff. On the other hand, the defendants have admitted the claim of the plaintiff and filed compromise Ex. C1 on record stating that suit be decreed in favour of the

plaintiff in view of compromise Ex. C1. Suffice it to say that present suit has been collusively filed by the plaintiff against the defendants and they want to set aside the mutation No. 2985 sanctioned on 3.7.1996 stating the same to be wrongly sanctioned in favour of the parties. Keeping in view the facts and circumstances of the case that mutation No. 2985 has been sanctioned in favour of the parties and no illegality worth the name has been proved on file with respect to the mutation in question. Therefore, merely on the admission of the defendants, the aforesaid mutation cannot be declared as null and void. Accordingly, the present suit stands dismissed. Parties are left to bear their own costs. Decree sheet be prepared accordingly and file be consigned to the record room after due compliance.”

Admittedly, in the earlier suit, the defendants therein did not contest claim raised by Subhash Chand and as such there was no issue that needed determination in the previous litigation. The Court has noticed that defendants admitted claim of the plaintiff therein and filed compromise Ex. C1. In order to attract the principle of res judicata, it is mandatory that the matter which is directly and substantially in issue in the present suit must be directly and substantially in issue in a former suit between the same parties or between the parties under whom they or any of them claimed to be

litigating under the same title and the said suit has been heard and finally decided by such court. In the former suit decided vide judgment dated 23.4.2005, the matter was not directly and substantially in issue nor the same has been heard finally and decided by the Court vide judgment Annexure A-1. On the contrary, the court had held that the suit has been collusively filed by the plaintiff against the defendants and they wanted to get mutation No. 2985 sanctioned on 3.7.1996 set aside. The mere fact that the court has held that no illegality worth the name has been proved on the file with respect to the mutation in question would not be sufficient to say that either the dispute raised in the present suit was directly or substantially in issue in the earlier suit or the same had been heard and finally decided by the court. In this view of the matter, the appellant cannot derive any advantage to his contention from the referred judgments decided in view of peculiar facts and circumstances nor can he be allowed to find fault with concurrent findings recorded by the courts.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

28.5.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No