

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2737 of 1989(O&M)

Date of Decision: 12.07.2019

Ranjit Singh(since deceased) through his LRs

... Appellant

Versus

Balwant Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Neeraj Jain, Advocate,
for the appellant.

Mr. Surender Garg, Advocate,
for the respondent.

RAMENDRA JAIN, J.(Oral)

Unsuccessful plaintiff has filed this regular second appeal against the concurrent findings of both the Courts below, dismissing his suit for possession by the trial Court vide judgment and decree dated 04.06.1987 and his appeal by the Appellate Court vide judgment and decree dated 07.10.1989.

Briefly, the appellant filed a suit for possession of land measuring 9 kanals situated in Village Raike Kalan against the respondent, claiming himself to be its owner on the ground that respondent had encroached upon the same illegally. He came to know about this fact on demarcation of his land on 11.7.1984 and thereafter, requested the respondent to remove his illegal encroachment, but he refused to do so.

The trial Court after holding full-fledged trial dismissed suit of the appellant being barred by the doctrine of "*res judicata*".

Being aggrieved, the appellant approached the First Appellate

Court, but remained unsuccessful as his appeal too was dismissed vide judgment and decree dated 04.06.1987.

Learned counsel *inter alia* contends that both the Courts below have failed to appreciate that the earlier suit between the parties was not decided on merits, because no issues were framed in the same. Therefore, the ingredients of “*res judicata*” were not fulfilled inasmuch as for application of the doctrine of “*res judicata*”, issues in earlier suit and subsequent suit should be the same.

On the other hand, learned counsel for the respondents controverting the submissions made by learned counsel for the appellant submits that subject matter and issues involved in the earlier suit and the present suit were the same. Therefore, both the Courts below have rightly rejected the claim of the appellant by dismissing his suit and appeal as well.

Having given anxious consideration to the submissions made by learned counsel for the parties, I find the instant appeal completely devoid of any merit for the reasons to follow.

Earlier suit for possession filed by the appellant for the same subject matter was dismissed vide judgment and decree dated 28.09.1982 (Ex. D-2 and D-1 respectively), which attained finality for being not challenged further by the appellant.

I have gone through the impugned judgments of the Courts below and found no illegality or perversity in the same.

The instant appeal is dismissed.

12.07.2019
monika

(RAMENDRA JAIN)
JUDGE