

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

RSA No.1655 of 1996 (O&M)

Date of decision : 17.01.2019

Amar Singh and others

...Appellants

Versus

Sohan Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Neha Jain, Advocate for the appellants.

Mr. Brijender Kaushik, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the Regular Second Appeal against the judgment passed by the First Appellate Court decreeing the suit filed by the plaintiff for possession of land measuring 1 kanals 17 marlas after reversing the judgment of the trial Court.

The plaintiff filed a suit claiming that he is owner of the property being auction purchaser of the land from the Central Government. The plaintiff further pleaded that he had filed a previous suit against the defendants in which it was held that he is owner of the property, however, not in possession.

The defendants contested the suit by pleading that their predecessor had mortgaged the land with the Central Government but the possession remains with them. It is further pleaded that the Rehabilitation Department auctioned the property comprised in Khasra No.14/2/1 but wrong khasra number was mentioned. Defendants further pleaded that they had challenged the aforesaid auction before the authorities and they deposited ₹1,000/- as challenge money before the authorities. Defendants also did not

dispute that previous suit was decided.

Learned trial Court dismissed the suit filed by the plaintiff on the ground that the sale certificate or *Sanad* has not been produced and, therefore, the plaintiff has failed to prove his ownership. Learned First Appellate Court held that a previous judgment inter parties have come on record in which findings have been returned to the effect that it is the plaintiff who is owner of the property. However, in the previous suit, since the plaintiff was not found in possession, therefore, the suit for injunction was dismissed vide judgment dated 16.03.1989. Thus, the First Appellate Court reversed the judgment of the trial Court.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

It is undisputed that plaintiff-respondent Sohan Lal had filed first suit on 07.11.1986 praying for a decree for permanent injunction against the defendants (appellants herein). In the aforesaid suit, learned Court framed the issue that whether the plaintiff is owner in possession of the disputed land. Learned Court, in the first suit, recorded a finding that the plaintiff is owner of the suit land but found not to be in possession. The suit was decided on 16.03.1989. In the present suit, copy of the judgment was produced, correctness whereof was not disputed between the parties. In fact, defendants themselves have pleaded that the previous suit operates as *res judicata*. In such circumstances, ownership of the plaintiff (respondent herein) stands proved. The defendants have failed to establish their right, title or interest over the property. In fact, the trial Court as well as First Appellate Court, both have found that the defendants have failed to establish their right, title or interest in

the property.

Learned counsel for the appellants submitted that since previous suit was decided on 16.03.1989, therefore, that judgment does not operate as res judicata and in the present suit, the plaintiff has not produced any evidence to prove that he is auction purchaser.

This Court has considered the submissions. There is some substance in the arguments of learned counsel. However, the argument in entirety is not correct. Previous judgment would not operate as res judicata but in the previous suit inter parties, plaintiff (respondent herein) had successfully established his title. That judgment would be a piece of evidence, even if it does not operate as res judicata.

In such circumstances, the defendants-appellants who have failed to prove their right, title or interest in the property cannot be permitted to continue in possession.

In such circumstances, there is no scope for interference.

Regular Second Appeal is dismissed.

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

17.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No