

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

RSA No.227 of 2001 (O&M)

Date of Decision: 13.08.2019

Kurda Ram and others

.....Appellants

Versus

Mahabir Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.C.S.Kaushik, Advocate
and Mr. Bhanu Sharma, Advocate
for the appellants.

Mr. R.K.Gupta, Advocate
for respondents no.1, 2, 4, 5 and 7.

LISA GILL, J.

Appellants, who were arrayed as plaintiffs no.3, 4 and 6, before the learned trial Court, are aggrieved of judgement and decree dated 05.08.1998, passed by learned Civil Judge (Jr. Division), Mahendergarh, as well as judgement and decree dated 25.08.2000, passed by the learned Additional District Judge, Narnaul.

Brief facts necessary for the adjudication of the case are that the plaintiffs filed a suit for possession of agricultural land measuring 67 Kanals 15 Marlas, as detailed in the plaint. It is pleaded that Smt. Lado wife of Nand Lal, was the owner of the land measuring 112 Kanals 4 Marlas, situated within the revenue estate of Village Pota. Mutation of inheritance of the land was sanctioned on 26.05.1959 pursuant to her death on 31.04.1958. She died intestate. Mutation to the extent of 1/5th share was sanctioned in favour of Smt. Juwahara wife of Pehlad, predecessor-in-interest of some of the defendants. Mutation of remaining 4/5th share was sanctioned in favour

of Mohariya, Sheotaj, Khuba and Net Ram sons of Mam Chand and Mohabata, predecessor-in-interest of the plaintiffs and proforma defendants except the legal representatives of Smt. Sukhdevi and Jai Devi, daughters of Mam Chand and sisters of Mohariya, Sheotaj, Khuba and Net Ram. Mohariya, Khuba and Net Ram, instituted a civil suit on 11.04.1960 challenging mutation of Smt. Lado's estate to the extent of 1/5th share in favour of Jawahara. It was pleaded by them that they were the sole legal heirs of Smt. Lado being nearest collaterals. Sheotaj son of Mam Chand, had since passed away issue-less, his share was also claimed by the plaintiffs. A part of the land was claimed to be in possession of the plaintiffs and a part thereof measuring 67 Kanals 15 Marlas in possession of the defendants. In the previous suit, the plaintiffs also sought possession thereof.

Defendants in the previous suit contested the said suit on various grounds including that of non-joinder of necessary parties while pleading that Sukhdevi and Jai Devi, daughters of Mam Chand/their legal representatives, were necessary parties to the suit. Defendants further claimed that Smt. Lado had left the village 40-50 years prior to her death after handing over possession of the suit property to them and she started living at her parental village Nishan. They claimed to be absolute owners of the land in possession and further they had perfected their title by adverse possession.

The first suit, filed by the plaintiffs was decreed by the learned trial Court, while holding that they were the sole legal heirs of Smt. Lado and Sheotaj. It was held that possession of the defendants did not ripen into ownership by way of adverse possession. Non impleadment of Sukhdevi and

Jai Devi, it was held, was not fatal, on the ground that any co-sharer can bring a suit for possession on behalf of all the co-sharers. Jai Devi, it is observed has appeared as a witness and deposed that she had no interest in the suit land.

Defendants preferred an appeal, which was allowed by the learned Additional District Judge, Narnaul. It was held that Sukhdevi and Jai Devi were necessary parties to the suit being legal heirs of Smt. Lado. The suit was held to be bad for non-joinder of necessary parties. The defect was held not curable even by the provisions of Order 1 Rule 10 CPC. Regular Second Appeal, preferred by the plaintiffs was dismissed by this Court. An application moved by the plaintiffs before this Court under Order 1 Rule 10 CPC, to implead the legal representatives of Sukhdevi was dismissed. Another application moved by the plaintiffs under Order 41 Rule 27 read with Section 151 CPC, for additional evidence to prove the death of Sukhdevi, was also dismissed. After dismissal of the application, the plaintiffs sought a certificate of fitness for filing letters patent appeal, which was dismissed on 10.12.1976, Ex.P-6. The plaintiffs civil appeal before the learned Apex Court, was also dismissed on 17.03.1994, Ex.P-3 leaving the plaintiffs to avail remedy as available to them in law.

The present suit seeking possession of the suit property was then filed by the plaintiffs after impleading the legal representatives of Sukhdevi and Jai Devi, while arraying them as proforma defendants. Suit was contested by defendants no.1 to 3, 5, 55, 56 and 58. Various preliminary objections including that of the suit being barred by the doctrine of res judicata and limitation were raised.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiffs and proforma defendants are owners of the suit property mentioned in title of the present suit?OPP
2. Whether the plaintiffs have no locus standi to file the present suit?OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is within limitation?OPD
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
6. Whether the plaintiff has no cause of action for filing the present suit?OPD
7. Whether the plaintiffs are estopped from filing of present suit by his own act and conduct?OPD
8. Whether the suit is barred by principle of resjudicata? OPD
9. Whether the defendants have become owner in possession of the suit property by way of adverse possession?OPD
10. Whether the defendants are entitled for special costs u/s 35 A CPC?OPD
11. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record concluded that the present suit filed by the plaintiffs was barred by principle of resjudicata vide judgement and decree dated 05.08.1998. Issue no. 8 was decided in favour of the defendants. Issue no.1 was decided in favour of the plaintiffs and issue no.9 against the defendants in view of the findings recorded in the earlier suit between the parties. Issue no. 4 was decided in favour of the defendants holding the suit to be time barred. Issues no. 2, 3, 5, 6, 7 and 10, were not pressed.

Plaintiffs no. 3, 4 and 6, filed an appeal challenging judgement and decree dated 05.08.1998. Cross-objections were also filed by defendants

no. 1, 4, 16, 32, 22, 39, 58 and 60.

Learned Additional District Judge, Narnaul, vide impugned judgement and decree dated 25.08.2000, reversed the findings recorded by the learned trial Court in respect to issue no.4. Suit was held to be within limitation in view of the findings recorded under issue no. 9. Appeal as well as the cross-objections were ultimately dismissed.

Aggrieved therefrom, the present appeal has been filed by the appellants.

Learned counsel for the appellants vehemently argues that both the learned Courts below have grossly erred in dismissing the suit filed by the appellants. It is argued that the earlier suit filed by the plaintiffs was dismissed purely on technical grounds. Doubtlessly, findings were recorded on other issues, but Section 9 CPC leaves the door open for filing a subsequent civil suit. Principle of resjudicata is not applicable in the facts and circumstance of the case. It is vociferously argued that the appellants were held to be the owners of the suit property alongwith the proforma defendants. A part of the land is already in possession of the appellants, thus there is no question of the present suit not being maintainable. It is submitted that an anomalous situation has been allowed to prevail by not allowing the suit for possession filed by the plaintiffs. The following substantial questions of law are set forth in the grounds of appeal:-

1. Whether the decision of the earlier suit can operate as resjudicata in filing the second suit when the earlier suit was dismissed on the ground of non-joinder of necessary party, while returning the findings on other issues in favour of the plaintiffs/appellants?
2. Whether the dismissal of the suit on the ground of non-joinder of necessary party can operate a bar to the second suit when the parties to the litigation between the two

- suits differ?
3. Whether the order passed by the Hon'ble Supreme Court in the earlier suit as has been reproduced herein above do not impliedly allow the plaintiffs/appellants to file a fresh suit by joining the necessary parties which were not joined?
 4. Whether the earlier suit was held to be within limitation and declining the adverse possession of the defendants, is there any bar to prefer a suit against the same party after making the suit competent by joining the necessary parties?

It is thus prayed that this appeal be allowed and the judgements and decrees passed by the learned Courts below, be set aside and suit filed by the appellants-plaintiffs be decreed throughout.

Per contra, learned counsel for respondents no. 1, 2, 4, 5 and 7 submits that the earlier suit filed by the plaintiffs was not dismissed solely on the ground of misjoinder of parties. There was an adjudication on all the issues after leading of evidence and due deliberations by the learned Courts. Application filed by the plaintiffs to implead Sukhdevi and Jai Devi as party, was admittedly dismissed. SLP No. 2780 of 1977 was also dismissed. It is further submitted that once the suit is ultimately dismissed, even if, there are any findings in favour of the plaintiffs, it is not necessary for the said party to have challenged the same and the appellants cannot derive any benefit thereof. Learned counsel submits that no substantial question of law is involved for consideration of this Court in the present appeal. It is thus prayed that the present appeal be dismissed and the judgements passed by the learned Courts below be upheld.

I have heard learned counsel for the parties and have gone through the record with their assistance.

At the outset, it is considered useful to refer to the pedigree

table, which is reflected in the judgement and decree dated 25.08.2000, which is reproduced as under:-

“Dharmu							
Jai Kishan		Bahader		Ram Kishan			
		Seo Ram					
Jhabar	Jodha	Girdhari	Mam Chand	Mohabat			
		Nad Lal @					
		Sheo Lal					
Pehlad	Bhagta			Khuba	Net Ram		
		Smt. Lado (Widow)					

is whether the present suit is barred by the principle of resjudicata. It is a matter of record that Net Ram, Khuba, sons of Mohbat etc., had earlier filed a suit for declaration to the effect that they are the sole legal heirs and successors of Smt. Lado and mutation no. 2609 dated 26.09.1959, was void and not binding insofar it was sanctioned in favour of Smt. Jawahara. The plaintiffs therein further prayed for possession of the part of the land which was in possession of the defendants. Learned trial Court, vide judgement and decree dated 30.11.1961, decreed the earlier suit, though it is paradoxically concluded that the plaintiffs and their two surviving sisters namely Sukhdevi and Jai Devi, were also entitled to inherit the suit property. It was further concluded that Smt. Lado never relinquished her rights in the property and that the defendants failed to prove themselves to be owners by way of adverse possession.

Appeal preferred by the defendants-Gulab Kaur and others was allowed and the earlier suit filed by the plaintiffs (present appellants), was accordingly dismissed vide judgement and decree dated 24.04.1976, Ex.P-7.

The issues framed in the said suit were as follows:-

1. Whether Smt. Lado was the owner of the proerty in dispute at the time of her death?OPP
2. Whether the plaintiffs are the sole heirs of Smt. Lado and Sheotaj deceased and as such have inherited the suit property, if so, what is its effect?OPP
3. Whether the suit is within time?OPP
4. Whether the defendants have become owners of the land by adverse possession?OPD
5. Whether the suit is barred by estoppel?OPD
6. Whether Smt. Lado had relinquished the property in favour of the parties during her time?On Chajju etc., defendants.
- 6A. Whether the defendants have become occupancy tenants of the suit land and have now swince become its owners having been in possssion of this land for more than 65 years. If so, its effect?on Gulab Kaur

- 6B. Whether the suit is bad for non-joinder of the necessary parties?on Gulab Kaur.
7. Relief.

Learned Additional District Judge, Narnaul, in the previous proceedings, observed that the plaintiffs had filed the suit claiming to be the sole owners of the suit property being the sole legal heirs of Smt. Lado and Sheotaj and they sought possession of the suit property on this premise. However, it was proved on record that Sukhdevi and Jai Devi, daughters of Mam Chand, were also the legal heirs of Sheotaj, who died after inheriting the estate of Smt. Lado. Therefore, they too were the legal heirs of Smt. Lado and Sheotaj along with the plaintiffs. It is further concluded that the defendants had failed to prove that they had acquired title over the land by way of adverse possession. Appeal preferred by the defendants in the earlier proceedings was allowed by the learned First Appellate Court and upheld right up to the Hon'ble Supreme Court.

At this stage, it is pertinent to refer to the relevant part of the discussion in the judgement dated 24.04.1976, Ex.P-7, which reads as under:-

“23. It is thus clear that both Jaidevi and Sukhdevi were heirs of Sheotaj who had died after inhering the estate of Smt. Lado and thus they were also the co heirs of Smt. Lado and Sheotaj, deceased along with the plaintiffs. The learned trial Judge also reached this conclusion through he held that 'the issue is found accordingly in favour of the plaintiff'. This last mentioned observation appearing in paragraph (10) of the his judgement appears an obvious clerical error. It must be held under issue no.2 that the plaintiffs are not the sole heirs of Smt. Lado and Sheotaj, and that Smt. Jaidevi and Smt. Sukhdevi were also co-heirs with the plaintiffs. Issue no.2 is thus decided against the

plaintiff.

24. As a necessary corollary to issue no.2, it must be held under issue no.6-B that the suit is bad for non-joinder of necessary parties. The learned trial Judge did take a notice of the fact that Smt. Jaidevi and Smt. Sukhdevi are co-heirs of Smt. Lado and Sheotaj, deceased along with the plaintiffs and that they have not been impleaded in the suit. Even then he decided issue no.6-B against the defendants because he was of the view that co-sharer can also file a suit for ejectment of a trespasser on the joint property. He was further influenced by the statement of Smt. Jaidevi (PW-4) to the effect that she was not interested in the suit land as she had relinquished her rights therein in favour of the plaintiffs. I am of the opinion that the approach of the learned trial Judge was erroneous.

25. It was not the suit of the plaintiffs that they had become sole owners of the suit property because the sisters of Sheotaj deceased had relinquished their rights in their favour. In the entire plaint they did not even mention that Sheotaj was survived by any sister. On the other hand it was pleaded categorically in paragraph (3) of the plaint that the plaintiffs are the sole heirs of Sheotaj. In these circumstances the statement of Jaidevi (PW-4), who as already mentioned was brought in the witness box at the fag end of the trial, cannot be taken as a supplement to the plaint. No relinquishment deed was brought on the record and there is nothing on the record to show that Smt. Sukhdevi had also relinquished her share in the estate of her brother Sheotaj. No benefit can, therefore, accrue to the plaintiffs from the statement of Smt. Jai Devi.

26. The fact remains that the plaintiffs did not implead the sisters of Sheotaj, who were undoubtedly co heirs of Smt. Lado and Sheotaj along with the plaintiffs and were necessary parties to the suit. On the other hand they claimed to be the sole heirs of Smt. Lado and Sheotaj and thereby they set up a claim which was adverse to that of the sisters of Sheotaj. Such a suit is

incomplete if such coheirs are not impleaded therein, and the defect that has crept in it cannot be cured even by the provisions of Order 1 Rule 9 CPC. For an authority on the subject I may sight Kanakarathanamma Versus Loganatha Mudaliar and another 1965 S.C271. In that case the plaintiff-appellant Kanakarhanamma filed a suit for possession of certain movable and immovable properties left by her mother. She claimed to be the sole heir of her mother but at the trial it transpired that she had two brothers who were coheirs with her and were necessary parties to the suit and yet they were not impleaded in the suit. An objection was taken by the defendants that the suit was bad for non-joinder of those brothers of the plaintiff. An issue was raised and it was decided against the plaintiff by the trial Court, with the result that the suit was dismissed. An appeal was taken by the plaintiff to the Hon'ble High Court of Mysore. The High Court upheld the decree of the trial Court (except in regard to a gold belt) on the ground that the plaintiff-appellant had not established her title to the suit property. That Court, therefore, did not consider it necessary to consider the validity of the finding of the trial judge that the suit was bad for non-joinder of necessary parties. The plaintiff took her further appeal to the Hon'ble Supreme Court and the matter relating to the non-joinder of necessary parties were re-agitated before that court by the opposite party. The Hon'ble Supreme Court observed as follows at page 275 of the Report.

'Therefore, we are satisfied that the trial Court was right in coming to the conclusion that even if the property belonged to the appellant's mother, her failure to implead her brothers who would inherit the property along with her makes the suit incompetent.'

At page 276 *ibid* it was observed that:-

'It is true that under O.1 R.9, of the Code of Civil Procedure, no suit shall be defeated by reason of the misjoinder or non-joinder of the parties, but there can be no doubt that if the parties who

are not joined are not only proper but also necessary parties to it. The infirmity in the suit is bound to be fatal.'

In that case an attempt was made before the Hon'ble Supreme Court to seek permission to amend the plaint by impleading the brothers of the plaintiff but that application was disallowed for the reasons given in paragraph(15) of the report. In the present case, no such application has been moved.

27. Rajabibi and others Vs. S.Ameerali and another, 1974 Karnatak 15 which followed Kanakarhanamma case (supra), is another authority for the proposition that if one of the co-sharers institutes a suit for ejectment against the trespasser, repudiating the claim of other co-sharers and claiming exclusive title for himself, such a suit would not be maintainable in the absence of the other co-sharers; and that non impleading of the other co-sharers in a suit of this nature is a fatal defect.

28. The learned counsel for the plaintiffs-respondents relied upon the authorities (i) Gopal Singh and others Vs. Mehnga Singh and others 1968 C.L.J, 39 (Pb & Hyna) and (ii) Ram Niranjana Dass and another Vs. Loknath Mandal and others 1970, Patna, 1(F.B) in support of the proposition that a co-sharer can alone institute a suit for recovery of possession of land against a trespasser. These authorities, however, do not help him. In the first place, the present was not a suit in which the plaintiffs had purported to sue as co-sharers against trespassers. The suit as framed was that the plaintiffs are "sole owners" of the suit property as sole heirs of Smt. Lado and Sheotaj and that the defendants are in possession of a portion of this land with the permission and consent of Smt. Lado, vide paragraphs (3) and (5) of the plaint. The case set up by the plaintiffs thus was that they are sole owners of the land in suit and that the defendants are in permissive possession of a part of that land. They cannot now be heard to argue that they had come as co-sharers seeking possession against trespassers for

the benefit of all co-sharers.”

It is in this view of the matter that both the learned Courts below in the present case concluded that the earlier civil suit filed by the plaintiffs operates as *res judicata*. The controversy, it is clear was decided in the earlier suit, after due consideration of the evidence on record and it is not that the plaintiffs have been non suited merely on the ground of misjoinder of parties. The plaintiffs had claimed to be the sole legal heirs of Smt. Lado and Sheotaj but this claim was not found to be substantiated by the evidence on record. Decision dated 24.04.1976, Ex.P-7, passed by the learned Additional District Judge, has admittedly attained finality.

Learned Additional District Judge, Narnaul, in the impugned judgement and decree dated 25.08.2000 in the instant case, has rightly observed that the main contest in the present suit is between the plaintiffs and the defendants, who were also party in the earlier suit. Legal heirs of Sukhdevi and Jai Devi have been impleaded as proforma respondents in the present suit, though neither appeared nor claimed any right or relief. The plaintiffs in their earlier suit had taken a stand that Sukhdevi had no right in the suit land because she has predeceased Smt. Lado and Jai Devi relinquished her share in the property in her favour. It is not the pleaded case of the plaintiffs that the said proforma defendants are entitled to any relief or indulgence. The said proforma defendants, it is observed have a right not only in the suit land, but in the entire land left by Smt. Lado. It is not in dispute that the present suit has been filed only in respect to a part of the land which was also the subject matter of the earlier suit. The relief claimed in the earlier suit was doubtlessly similar. The plaintiffs in the previous suit had also prayed for the relief of possession along with the declaration as

detailed in the foregoing paras. The present suit has been filed for possession merely while impleading Jai Devi and Sukhdevi/their legal representatives as proforma defendants.

Learned counsel for the appellants while referring to order dated 17.03.1994, passed by the Hon'ble Supreme Court in Civil Appeal No. 2617 of 1977, argued that once liberty was afforded to the appellants to avail remedies available in law, it amounts to permitting the appellants to file the subsequent suit for possession. Such an argument is clearly devoid of any merit as it is a matter of record that even during the pendency of the earlier suit, their application to implead Sukhdevi and Jai Devi/their legal representatives, was dismissed. Application under Order 1 Rule 10 CPC, filed by the plaintiffs in R.S.A No. 1297 of 1976, was dismissed on 12.10.1976. Application under Clause X of the Letters Patent Appeal, praying for a certificate of fitness for filing an appeal against the judgement dated 12.10.1976, filed by them was dismissed. The Hon'ble Supreme Court in Civil Appeal No. 2617 of 1977, filed by the plaintiffs passed the following order:-

“We have heard Shri G.Ramaswamy, learned counsel for the appellants in support of the appeal. We do not find any infirmity in the impugned judgement. The appeal, is therefore, dismissed. We leave to the appellants to avail whatever remedies available in law.

The Civil Miscellaneous Petitions, interlocutory applications and the Contempt Petition are also dismissed.

No costs.”

The liberty afforded to the appellants is to avail remedy as is available to them in accordance with law and not that the appellants have

been held entitled to file a subsequent suit for possession as is sought to be urged. There is thus no merit in the argument raised by learned counsel for the appellants that the Hon'ble Supreme Court while dismissing Civil Appeal No. 2617 of 1977, has afforded liberty to the appellants to file a fresh suit seeking possession. The bar of *res judicata* is clearly applicable in the present case. The Hon'ble Supreme Court in **Sheodan Singh Vs. Daryao Kunwar, (1966) 3 SCR 300**, has observed that to constitute a matter *res judicata*, the following conditions must be satisfied, namely:-

- “(i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;
- (ii) The former suit must have been a suit between the same parties or between, parties under whom they or any of them claim;
- (iii) The parties must have litigated under the same title in the former suit;
- (iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and
- (v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit. Further Explanation I shows that it is not the date on which the suit is filed that matters but the date on which the suit is decided, so that even if a suit was filed later, it will be a former suit if it has been decided earlier. In order therefore that the decision in the earlier two appeals dismissed by the High Court operates as *res judicata* it will have to be seen whether all the five conditions mentioned above have been satisfied.”

The Hon'ble Supreme Court in **Canara Bank Vs.**

N.G.Subbaraya Setty and Ors. (2018)16 SCC 228, observed that in determining the application of the rule of *res judicata*, the Court is not concerned with the correctness or otherwise of the earlier judgement. The matter in issue, if it is one purely of fact, decided in the earlier proceedings by a competent Court, must in a subsequent litigation between the same parties be regarded as finally decided and cannot be revoked.

It is concluded by the Hon'ble Supreme Court in **Canara Bank's** case (supra), as under:-

33. Given the conspectus of authorities that have been referred to by us hereinabove, the law on the subject may be stated as follows:
- (1) The general rule is that all issues that arise directly and substantially in a former suit or proceeding between the same parties are *res judicata* in a subsequent suit or proceeding between the same parties. These would include issues of fact, mixed questions of fact and law, and issues of law.
 - (2) To this general proposition of law, there are certain exceptions when it comes to issues of law:
 - (i) Where an issue of law decided between the same parties in a former suit or proceeding relates to the jurisdiction of the Court, an erroneous decision in the former suit or proceeding is not *res judicata* in a subsequent suit or proceeding between the same parties, even where the issue raised in the second suit or proceeding is directly and substantially the same as that raised in the former suit or proceeding. xxxxx
 - (ii) An issue of law which arises between the same parties in a subsequent suit or proceeding is not *res judicata* if, by an erroneous decision given on a statutory prohibition in the former suit or proceeding, the statutory prohibition is

not given effect to. This is despite the fact that the matter in issue between the parties may be the same as that directly and substantially in issue in the previous suit or proceeding. This is for the reason that in such cases, the rights of the parties are not the only matter for consideration (as is the case of an erroneous interpretation of a statute inter parties), as the public policy contained in the statutory prohibition cannot be set at naught. This is for the same reason as that contained in matters which pertain to issues of law that raise jurisdictional questions. We have seen how, in Natraj Studios (supra), it is the public policy of the statutory prohibition contained in Section 28 of the Bombay Rent Act that has to be given effect to. Likewise, the public policy contained in other statutory prohibitions, which need not necessarily go to jurisdiction of a Court, must equally be given effect to, as otherwise special principles of law are fastened upon parties when special considerations relating to public policy mandate that this cannot be done.

- (iii) Another exception to this general rule follows from the matter in issue being an issue of law different from that in the previous suit or proceeding. xxxxxx.”

In the instant case, both the learned Courts below in the factual matrix of the case, have rightly concluded that the bar of *res judicata*, is applicable. Former proceedings, directly and substantially involved the issues which are sought to be raised in the present suit. The plaintiffs have filed the present suit seeking possession of the property in question by impleading Jai Devi and Sukhdevi, merely to set at naught the earlier decision, which was rendered on merits. Argument of learned counsel for the appellants that the parties to the present suit are different because Jai Devi,

Sukhdevi/ their legal representatives have been impleaded, albeit as proforma defendants, is clearly devoid of any merit in view of the discussion in the foregoing paras. Similarly, the contention that the defendants have not challenged the findings rendered against them is rejected being unacceptable as it is a settled position that in case of the ultimate dismissal of a suit, it is not incumbent upon the defendants to challenge the same. Accordingly, the questions of law, are answered in favour of the respondents and against the appellants.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 05.08.1998 and 25.08.2000 passed by the learned Civil Judge (Jr. Division) Mahendergarh and learned Additional District Judge, Narnaul, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

13.08.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.