

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

RSA No.4465 of 2011 (O&M)

Date of Decision:15.03.2019

Inder Singh (since deceased) through his LRs and others

...Appellant(s)

Versus

Nafe Singh (since deceased) through his LRS

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sandeep Lather, Advocate for the appellants.
Mr.S.N.Pillania, Advocate for the respondent.

ANIL KSHETARPAL, J.

The defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment and decree passed by the learned trial court.

The plaintiff-Nafe Singh filed a suit claiming that he is in possession of the property pursuant to a gift deed executed by the Gram Panchayat in favour of landless persons on 11.09.1997 and the defendants are interfering in his possession.

The defendants-appellants filed a counter claim by pleading that such gift is null and void. It was further pleaded that the suit is barred by the rule of resjudicata.

The learned trial court, after returning a finding that the present suit is hit by the rule of resjudicata, dismissed the suit. However, the learned first appellate court, after re-appreciating the evidence, has found that the rule of resjudicata cannot be applied particularly when the property involved in the previous suit and the present suit is not same.

This Court has heard the learned counsel for the parties at

length and with their able assistance gone through the judgments passed by the courts below.

Learned counsel appearing for the appellants has drawn attention of the Court to the judgment passed on 28.09.2002 in a suit filed by appellant No.1. On careful perusal of the aforesaid judgment, it is apparent that it was only an injunction suit and the defendants in that suit were ex parte. Still further, no issue was framed in the previous suit.

In the previous suit, the property was not identified by giving khasra number in which the property is situated. Only details of the surrounding property were given. In the present suit, the plaintiff has claimed that he is an allottee of the land by the Gram Panchayat. Sarpanch has also appeared in evidence and proved that gift deed. In absence of evidence to prove that the property involved in the previous suit and this suit is same and since previous suit was decided ex parte, therefore, neither any issue was framed nor any detailed discussion was made, in such circumstances, the learned first appellate court has correctly held that this suit is not barred under the principle of resjudicata. The basic requirement to invoke the principle of resjudicata is that in the previous suit and subsequent suit, the issue should be directly and substantially in issue.

As noted above, there is no evidence to establish this fact. Still further, the defendants-appellants have failed to establish any right, title or interest in the property. They have also failed to establish that the gift deed in favour of the plaintiff is null and void.

In view of the above, there is no ground to interfere. Hence, regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

15.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No