

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

**RSA No.1406 of 2016 (O&M)
Date of decision:25.01.2019**

Gurmail Singh

... Appellant(s)

Vs.

Bhupinder Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Tarun Sharma, Advocate and
Mr.R.S.Bajaj, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the judgment and decree dated 22.09.2015 of the Lower Appellate Court, whereby, appeal of the defendants against decretal of the suit filed by the appellant-plaintiff, has been allowed.

The appellant-plaintiff sought the possession of the plot measuring 7 marlas comprising in khasra number 33//16/8 (0-7) situated in the area of Basti Bawa Khel, Jalandhar on the premise that Sohan Singh purchased the suit property, vide registered sale deed dated 24.11.1975. During life time of Sohan Singh, demarcation of the property was conducted and defendant no.1 was found to be tress-passer/encroacher. Despite repeated requests, he did not hand over the possession and civil suit for possession was filed which was decreed on 13.10.1982 and upheld upto this Court but Sohan Singh could not continue the execution proceedings due to

his illness and the same was consigned, vide order dated 6.3.1999. After demise of Sohan Singh, the property was mutated in favour of the plaintiff as Sohan Singh had executed a registered Will dated 28.03.2003. On the basis of Will, mutation accordingly was sanctioned in his name and thus, acquired the legal right.

The defendants opposed the suit by raising the plea of res judicata and maintainability of the suit. It was stated that execution had not been consigned owing to the fact that property was not found to be encroached but in fact, in their ownership.

The trial Court on the basis of pleadings framed as many as 07 (seven) issues including the issue of Relief. The plaintiff himself stepped into witness box as PW1 and examined Dalip Singh as PW2 and closed the evidence. On the other hand, defendants examined Bhupinder Singh as DW1 and closed the evidence. The trial Court by over-ruling objection of res-judicata decreed the suit.

Mr. Tarun Sharma, learned counsel appearing on behalf of the appellant-plaintiff submitted that on plain and simple reading of the provisions of Section 11 of Code of Civil Procedure, *doctrine akin to res judicata* would not be applicable as the parties to the lis were different. A separate cause of action accrued to the plaintiff on acquisition of title on the basis of testamentary documents. The encroacher cannot acquire the right of ownership and retained the illegal possession and thus, there is illegality and perversity.

I have heard the learned counsel for the appellant, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Tarun Sharma. On plain and simple reading of provisions of Explanation I and VIII of Section 11 CPC, extracted herein below:-

“Explanation I

The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation VIII:

An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as res Judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit in which such issue has been subsequently raised.”

would reveal that if the matter in dispute is heard and decided by the Court, second round of litigation on the same point cannot be permitted. Concededly, the property in dispute is same but only on demise of previous decree holder, the plaintiff has acquired the ownership by virtue of mutation but no explanation has come forth why the decree was not maintainable, nor any evidence in this regard was led. Had all these factors been brought on record, perhaps there would have been some force. In the absence of same, finding of fact and law rendered by the Lower Appellate Court cannot be

said to be suffering from illegality and perversity.

No ground for interference is made out.

Resultantly, the appeal is dismissed.

January 25, 2019

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No