

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

**RSA No.4140 of 2018 (O&M)
Date of Decision:29.01.2019**

Surinder Pal Sharma @ Surinder Kumar Sharma @ Bobby and another

....Appellants

Versus

Veena Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr.Dhruv Sharma, Advocate for
Mr.Kuldeep Tiwari, Advocate for the appellants.

Mr.Amit Gupta, Advocate for respondents No.1 to 3.

SUDIP AHLUWALIA, J.(ORAL)

This appeal has been filed against the judgement passed by the learned Additional District Judge, Ludhiana in Civil Appeal No.87 dated 2.7.2013 vide which the original decree passed on 23.05.2013 in favour of the respondents-plaintiffs by the learned Civil Judge (Junior Division), Ludhiana in CS No.109 dated 10.04.2010 was affirmed, and consequently the first appeal of the appellants was dismissed.

2. After hearing both sides and considering the available material on the Lower Court records, it is seen that defence of the appellants had been ordered to be struck off on 27.09.2010 by the Ld.Trial Court on account of their repeated failures to file their Written Statement.

3. Consequently the entire evidence led from the plaintiff's side remained un-rebutted and the appellant/defendant No.1 from his side did not

place any document on record showing his possession over the disputed property bearing No.B.IV.2147, Partap Bazar, Badni Mohalla, Ram Mandir Gali, Ludhiana. The appeal subsequently preferred by the appellants was dismissed by the learned Lower Appellate Court which also found that the evidence led by the respondent/plaintiff was un-rebutted and no defect could be pointed out by the appellants' side, which could lead to the conclusion that the Trial Court had not considered the case in the correct prospective.

4. Now the appellants are specifically aggrieved that even though their defence had otherwise been struck out, still the Trial Court was under an obligation to dismiss the suit on the legal grounds, urged, to the effect that it was barred by res-judicata on account of dismissal of an earlier suit filed by the plaintiffs in which the same kind of relief had been sought for.

5. This Court has perused the relevant application filed on behalf of the appellants under Section 11 of the CPC which is on pages 121 - 122 of the Trial Court's record as available before this Court. Perusal of the same goes to show that the material contention in the said application was described as follows:-

“5. That the deponent is highhanded with the police to grab the property with the rights of the respondent and deponent adamantly deposed falsely in the favour of the plaintiff to get the decision in favour of the plaintiff court of law in fact earlier and another suit has been dismissed by the Hon'ble Court of Sh.Ashok Kapoor, C.J.J.D. Ludhiana 2002.”

6. It is thus seen that there is not even any averment to the effect that the earlier alleged suit dismissed by the Court of Civil Judge (Junior Division), Ludhiana was between the same parties, or that the matter in issue therein was directly and substantially the same, and most importantly, that the aforesaid previous suit was dismissed on merits.

7. Now perusal of the copy of the plaint filed in the subsequent suit in which the decree was passed in favour of the respondents goes to show that they had specifically mentioned about the previous suit which according to them was dismissed for non prosecution as the plaintiffs could not pursue the same on account of death of husband of the plaintiff No.1 who expired on 01.05.2003 after a long illness.

8. Further-more, in para 04 of the plaint it has been specifically mentioned that the cause of action for filing the subsequent suit accrued against the defendant some days prior to filing of the suit and lastly only a day earlier when the defendant had threatened the plaintiffs to interfere in peaceful possession of their portion of the disputed property and to cause damage to the tenanted premises of the plaintiffs in order to compel them to vacate the same.

9. It is therefore, clear that the cause of action to file the second suit is specifically described as having accrued afresh long after the previous suit was dismissed for non prosecution. Since no written statement from the side of the appellants in any case had come before the Trial Court, so clearly there is no reason to hold that the subsequent suit could by any stretch of imagination have been barred by the principle of resjudicata since according to order 9 rule 4 of the CPC, there is no bar to filing of even a fresh suit on the previous cause of action but subject to the law of

limitation.

10. But in the present case even the plea of cause of action relied upon in the present suit is shown to have accrued subsequently.

11. For the above reasons, this Court finds no substantive merit in the present appeal which is accordingly dismissed.

(SUDIP AHLUWALIA)
JUDGE

29.01.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No