

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

**RSA NO. 5053 OF 2019 (O&M)
DATE OF DECISION : 24.01.2020**

Ravinder Singh and another

...Appellants

versus

Pushpa and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Parvinder Singh, Advocate,
for the appellants.

Mr. Saurav Bhatia, Advocate,
for the caveator/respondents

ARUN MONGA, J. (ORAL)

The defendants are in second appeal having suffered the adverse concurrent findings by both the Courts below to assail the judgments and decrees passed by the trial Court as well as First Appellate Court.

2. The suit was filed for declaration to the effect that the plaintiffs are co-owners in equal shares to the extent of 1/4th share and in joint possession of the suit land bearing Khasra No.4082/1398 measuring 03 kanals 17 marlas situated at village Chakdana, H.B. No.202, Tehsil Nawanshahr, District SBS Nagar, with consequential relief of permanent injunction. After appreciation of evidence adduced by both the parties, the suit was decreed by the trial Court in favour of the plaintiffs. Learned

First Appellate Court uphold the judgment and decree of the learned trial Court.

3. Succinct factual matrix of the case as adumbrated by the First Appellate Court below is that plaintiffs along with Nirmal Singh, Lal Singh and Karam Kaur were co-owners in possession in equal shares to the extent of 3/4th share in the suit land and being class-I heirs of Kuldip Singh. Plaintiffs had 1/4th share in the suit property. Jagat Singh, grand father of defendant No.1 and father of defendant No.2 purchased land measuring 11 kanals 0 marlas from plaintiffs vide sale deed dated 15.05.1986. The share of plaintiffs in Khasra No.4082/1398 was never purchased. However, in connivance with the revenue authorities, Jagat Singh got entered and sanctioned mutation of ¼ share in Khasra No.4082/1398 in his favour. Jagat Singh never tried to interfere in the possession of plaintiffs during his lifetime. After the death of Jagat Singh, his wife Gulwant Kaur executed an exchange deed fraudulently pertaining to the suit land with her son Jarnail Singh, without any right or title. Gulwant Kaur and her son Jarnail Singh got their names wrongly reflected in the Jamabandi for the years 1995-96 and 2000-01 on the basis of previous entries in the name of Jagat Singh. Jarnail Singh transferred his share in the aforesaid khasra number in favour of his son Ravinder Singh, who further got mutation sanctioned in his name. The plaintiffs came to know about the fraud played by Jagat Singh 3-4 months ago when defendants No.1 and 2 started

declaring that they are owners to the extent of 1/4th share in the suit land. Hence, the suit.

4. On notice, defendants appeared and filed joint written statement taking preliminary objections that suit is not maintainable; plaintiffs are estopped by their act and conduct from filing the present suit and are guilty of acquiescence; plaintiffs have no locus standi to file the suit as they have no concern whatsoever with the property in question which has since long been partitioned amongst the then co-sharers; defendant No.1 had been allotted the same land which has since been in his possession and earlier had been in possession of his predecessor-in-interest; partition has since been effected; sanad was prepared and possession was delivered accordingly and land in possession of defendant No.1 had been allotted Khasra No. 4082/1398/1 (0-19) as tatima has since been carved out; suit is not within time; plaintiffs are aware of sanctioning of mutation No.2240 from its inception i.e 23.07.1986; suit is hit by principles of res-judicata as the controversy in question was earlier raised by the plaintiffs qua the subject matter between plaintiffs and immediate predecessor-in-interest of defendant No.1 in Civil Suit No.821/1993 dated 24.09.1993 and that suit was dismissed by the Court of Civil Judge (Junior Division), Nawanshahr on 02.04.1996. In that suit, Pushpa one of the plaintiffs had deposed on her behalf as well as on behalf of other plaintiffs and hence the plaintiffs have no locus standi and cause

of action to re-agitate the same issue in the present suit and that the suit is bad for mis-joinder and non-joinder of necessary parties.

5 On merits, it was pleaded that defendants No.3 to 5 have no concern with the suit land which is in exclusive ownership and possession of defendant No.1 after partition. Earlier Nirmal Singh, Lal Singh and Karan Kaur were owners in equal shares to the extent of 3/4th share out of which they were in possession of one side of this khasra number, whereas, Pushpa, Hardit Singh and Kirti Kaur were owners to the extent of 1/4th share in this khasra number and they were in possession on the northern side of this khasra number along with other holdings in village Chak Dana, which was sold to Jagat Singh and accordingly mutation No.2240 was sanctioned correctly and was incorporated in the revenue record in the presence and consent of Pushpa and others. At the time of sale, possession was delivered to predecessor-in-interest of defendant No.1 and entries from Jagat Singh in favour of Gulwant Kaur, then in the name of Jarnail Singh on the basis of exchange deed and thereafter in the name of Ravinder Singh are correct. Other allegations were denied.

6. Replication was not filed. Based on the rival pleadings, following issues were framed in Civil Suit No. 115-CS of 2009 :-

- 1) Whether the plaintiffs are entitled to declaration as prayed for ? OPP

- 2) Whether the plaintiffs are entitled to permanent injunction as prayed for ? OPP
- 3) Whether the plaintiffs are entitled to possession as alternative relief ? OPP
- 4) Whether the plaintiffs have no locus standi to file the suit ? OPD
- 4-A) Whether suit is barred under the principles of res-judicata ? OPD
- 5) Whether the suit is not maintainable in the present form ? OPD
- 6) Relief.

7. In order to prove their case and to discharge their onus as per the issues framed, *ibid*, the parties to suit adduced their respective oral as well as documentary evidence.

8. Based on the evidence adduced by the parties, the trial Court returned the findings on Issues No.1 and 3 in favour of the plaintiffs. Issue No.2 was decided in favour of the defendants as the trial Court found that the plaintiffs were not in possession of the suit property. However, they were granted alternative relief of possession vide Issue No.3.

9. Issues No.4, 4-A and 5 were decided in favour of the plaintiffs and against the defendants as the trial Court came to the conclusion that previous suit filed by one Majha Singh claiming himself to be power of attorney holder of Pushpa and others was unauthorized. In the earlier suit proceedings, Pushpa appeared for herself and for plaintiffs No.2 and 3 and filed an application (Exhibit P-22) for withdrawal of said suit. She took a

categorical stand that she never appointed Majha Singh as her power of attorney to file the suit against the defendants therein. In the premise, the earlier suit was dismissed by holding that the same was not filed by a competent person. Having been dismissed on technical grounds, the trial Court found that the subsequent suit i.e the suit in hand was not barred by the principles of res-judicata. In first appeal, the findings returned by the trial Court were upheld and the reasoning assigned therefore was reiterated. The appeal was accordingly dismissed and the judgment and decree passed by the trial Court was upheld.

10. I have heard learned counsel for the parties and have perused the records. Having given my thoughtful consideration, I am of the view that the present second appeal is bereft of merit and is liable to be dismissed.

11. Concededly, the earlier civil suit had been filed through Majha Singh claiming himself to be the attorney of the plaintiffs herein on 22.09.1993 seeking declaration of ownership and possession of the same suit land. That suit was dismissed vide judgment and decree dated 02.04.1996, as being not maintainable since it was found that Majha Singh was not the authorized power of attorney holder of the plaintiffs. What emerges, thus, is that if power of attorney itself was unauthorized, then the person whom the power of attorney claimed to have represented cannot be said to have filed the earlier suit or in any case, cannot be construed as the plaintiff or

a party thereto. The defendants in the earlier suit did not file any appeal against the dismissal of the previous suit and it is only in the year 2011, when the respondents/plaintiffs herein filed a suit on or about 16.08.2011 i.e five years after dismissal of previous suit and sought the same relief of declaration qua ownership and possession that the appellants/defendants took a plea of limitation (citing Article 15 of the Limitation Act) as the earlier suit was dismissed more than three years ago. Bar of res-judicata was also set up on the ground that judgment and decree dismissing their claim in the earlier suit is binding on the plaintiffs/respondents herein.

12. Learned counsel for the appellants has strenuously argued that under Section 11 of Code of Civil Procedure, the appeal is maintainable against a decree and not against the findings and therefore, they were well justified in not filing the appeal against earlier suit, as no decree was passed against them. In support of his argument, he has relied upon judgment rendered by Hon'ble the Supreme Court of India in case titled as **"Smt. Ganga Bai v. Vijay Kumar and others" 1974 AIR (SC) 1126, "Harbans Kaur v. Jaswant Singh and others" 2011 (5) RCR (Civil) 481** and **"State of Andhra Pradesh and others v. B. Ranga Reddy (D) by Lrs and others" 2019 (4) RCR (Civil) 131.**

13. Having perused the said judgments this Court is of the view that the same do not advance or support the argument of

learned counsel for the appellants.

14. In the present case, in joint written statement (Annexure A-5) filed in the earlier suit No.819 of 1993 and 215 of 1995, Jarnail Singh predecessor-in-interest of the present appellant, had pleaded that alleged power of attorney executed by the plaintiffs/respondents (i.e Pushpa, Hardit Singh and Kirti Kaur) in favour of Majha Singh was not a valid document. Neither the said power of attorney authorized Majha Singh to file or pursue the earlier suit by the plaintiffs nor was he otherwise competent to file any such suit. The stand taken in the written statement, therefore, clearly shows that the earlier suit was not entertainable/maintainable. The Court while deciding the said suit accepted this contention as per the written statement filed by the defendants and dismissed the suit on that very technical ground. Whereas in the present case, the First Appellate Court rightly noted in para 25 of its judgment that in the earlier suit had been dismissed on technical grounds having not been filed by a duly authorized person. Therefore, it rightly observed that previous suit had not been finally decided by the Court of competent jurisdiction on merits and had been dismissed merely on technical grounds.

15. In this context, reference may be had to Section 11 of CPC which is reproduced as under :

" No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit

between the same parties, or between parties under which they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

16. A perusal of the above leaves no manner of doubt that to attract the bar of res-judicata under Section 11 of CPC, it is necessary to show, *inter-alia*, that the former suit had been filed by the same party or a party under whom the party in the subsequent suit claims. The object, intent and spirit of this provision seems to be that the former suit should have been filed actually and really by or under the authority of the same party or a party under whom a party in the subsequent suit claims.

17. To my mind, the bar of res-judicata would not be attracted if the former suit had not actually been filed by or under a valid authority of the party filing the subsequent suit. Any contrary interpretation of the provision, *ibid* would result in absurd situation and equally absurd consequences by giving a handle to unscrupulous persons to file and/or get filed cases in the name of others without their authority and/or file the same at their back manipulate favourable decisions and use the decision of such case against the persons who had not actually filed or authorized the filing of former suit.

18. In the instant case, the former suit had neither been filed by the present plaintiffs/respondents, nor under a valid

authority from them. On that technical ground it was dismissed and rightly so. In my opinion, its dismissal does not operate as res-judicata against the plaintiffs. In Harbans Kaur's case (supra) relied upon by learned counsel for the appellants, the former and the subsequent suits were filed actually by the same plaintiffs. It was, therefore, held that the subsequent suit was barred by res-judicata. The position in present case is entirely different. Moreover, in the said judgment it was also held that if the former suit is dismissed simply on a technical ground, then the decision would not operate as res-judicata. In the instant case also, the previous suit had been dismissed on technical ground as it was not filed actually by or under valid authority of the plaintiffs. To that extent, judgment in *Harbans Kaur's case (supra)*, goes in favour of the respondents and against the appellants.

19. There seems to be no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

20. The two Courts below on appraisal of record returned a concurrent finding of fact that suit land was never sold to Jagat Singh, predecessor-in-interest of the defendants. These findings have been rightly returned and are correct. Plaintiffs right of ownership of suit land would not be negated or defeated merely by its wrong mutation in the name of Jagat Singh and on that

basis ultimately in the name of appellants.

21. Furthermore, neither any question of law much less substantial question of law, which is sine qua non for entering second appeal before this Court is involved in present appeal so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Code of Civil Procedure.

22. In view of my above discussion and all the reasons recorded therein, the appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by the Courts below are upheld.

23. Pending applications, if any, also stand disposed of.

24. No order as to costs.

(ARUN MONGA)
JUDGE

JANUARY 24, 2020
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| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |