

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

RSA No. 1049 of 2017 (O&M)

Date of Decision: 24.01.2020

Jai Bhagwan and another

.... Appellants

Versus

Kaushalya Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chander Shekhar, Advocate
for the appellants.

Mr. S.S.Dinarpur, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in regular second appeal against the judgment passed by learned First Appellate Court reversing the judgment of the learned trial Court.

Issue framed by the trial Court on question of subsequent suit being barred on the ground of “res judicata” was examined by the Court. Learned trial Court held that the subsequent suit (the present suit) is barred on the principle of “res judicata” whereas the learned First Appellate Court has reversed the same. The defendants in the present suit, had filed a suit for permanent injunction restraining the plaintiff in the present suit (defendant in the previous suit) from raising any construction in the land comprised in khasra No. 26/2 min and khasra No. 26/9. During the pendency of the previous suit, the plaint was amended and relief of mandatory injunction was also added, on the ground that the defendant in the aforesaid suit has constructed a wall.

By ex parte judgment dated 29.07.2011, defendant (plaintiff herein) was restrained from raising construction of the wall and she was

also directed to remove the already constructed wall in khasra No. 26/9.

There is no dispute that the parties are co-sharers. Partition proceedings between them are pending. The plaintiff has filed the present suit claiming that she is in exclusive possession of the land comprised in khasra No. 26/2 min (5-8). Learned First Appellate Court has found that the dispute with regard to the question as to who is in exclusive possession of the aforesaid land was neither directly nor substantially an issue in the first suit. Thus, the Court has held that the present suit is not barred by the principle of “res judicata”.

Learned counsel appearing for the appellants has submitted that in view of explanation No. IV of Section 11 of the Code of Civil Procedure, the plaintiff, herein, ought to have taken the defense in the first suit and hence, he is debarred from instituting the present suit.

This Court has considered submission. It is not in dispute that when the previous suit decided on 29.07.2011, the question as to who is in exclusive possession of khasra No. 26/2 was neither directly nor substantially an issue.

Keeping in view the aforesaid facts, there is no ground to interfere. The petition is dismissed.

Ld. trial Court is requested to proceed with the suit. Parties through their counsel are requested to appear before the learned trial Court on 10.02.2020.

(ANIL KSHETARPAL)
JUDGE

24.01.2020

Maninder

Whether speaking/reasoned : Yes
Whether reportable : No