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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5805-2019(O&M)
Date of decision: 10.01.2020

Buta Singh and others

.....Appellants

Versus

Kabal Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sharad Mehra, Advocate for the appellants

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in Regular Second Appeal against concurrent finding of fact arrived at by the Courts below while dismissing a suit for declaration that they are owners in possession of the property.

Dispute is with regard to inheritance of property left by late Sh. Desa Singh, common ancestor of the parties. Plaintiffs claim the property on the basis of natural succession and have also alleged that the Will set up by the defendants dated 31.1.1995, allegedly executed by Desa Singh, is forged and fabricated. On appreciation of evidence the Trial Court dismissed the suit. Learned Trial Court held that the Will of Desa Singh Ex. D-1 dated 31.1.1995 has been proved, although no attesting witness has been examined in the Court to prove the Will. The Trial Court noticed that Daljit Singh, attesting witness of the Will had

appeared in a suit titled as 'Kabal Singh vs. Gram Panchayat'. The Trial Court relied upon the aforesaid statement. The suit was also held to be not maintainable as previous suit was dismissed under Order 17 Rule 3 CPC.

Learned First Appellate Court on re-appreciation of the evidence held that the Will has not been proved in accordance with Section 68 of the Indian Evidence Act, 1872. However, the First Appellate Court found that the present suit filed by the plaintiff is barred as previous suit filed by them was for the same relief, with respect to the same property by the plaintiffs, was dismissed by the Court on 6.2.1998 under Order 17 Rule 3 C.P.C.

This Court has heard learned counsel for the appellants and with his able assistance has gone through the judgments passed by the Courts below. Learned counsel for the appellants submitted that in the previous suit there was no judgment on merits, therefore, the present suit is not barred. He further submitted that some of the parties to the previous suit and the present suit are different. Hence, he submitted that second suit would not be barred.

This Court has considered the submissions. At this stage, it will be appropriate to notice that the previous suit was filed by ten plaintiffs including three namely Gurbachan Singh @ Bachan Singh, Buta Singh and Veero @ Rano, (all the three plaintiffs herein). The aforesaid suit was filed with respect to the same property and on the same question. The defendants in the aforesaid suit were Kabal Singh and Anoop Singh, who are defendants No.1 and 2 in the present case.

Some of the plaintiffs of the previous suit have not joined as plaintiffs in the present litigation. However, that would not make any difference, particularly, when the nature of the dispute and the issue canvassed before the Court in the previous suit was same.

At this stage, it will be appropriate to extract the order passed by the Court in the previous suit on 6.2.1998 while dismissing the previous suit under Order 17 Rule 3 CPC.

“Present: Sh. Faqir Singh, Advocate, counsel
for the plaintiffs.

Sh.S.K.Mehta, Advocate, counsel
for the defendants.

No evidence of the plaintiffs is present, nor any witness summoned nor costs paid despite the fact that last opportunity was granted to them for today. Even none of the plaintiffs is present to make statement. No explanation furnished for not producing any evidence despite last opportunity. I see no justification to adjourn the case further for evidence of the plaintiffs and as such evidence of the plaintiffs is closed by order under Order 17 Rule 3 CPC. As the plaintiffs have not produced the evidence despite availing many opportunities, as such the suit of the plaintiffs is dismissed under Order 17 Rule 3 CPC. Decree sheet be prepared and the file be consigned to record room.”

It is undisputed that pursuant to the aforesaid final order a decree sheet as noticed by the First Appellate Court was drawn by the trial Court. Once the previous suit has been dismissed under Order 17

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Rule 3 CPC and a decree sheet has been drawn, the remedy for the appellants was to file appeal and not file a fresh suit. The judgment passed under Order 17 Rule 3 CPC clause (a) is a decision on merits and not wholly in default.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere. Dismissed.

10 .01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No