

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

CR 1549 of 2007 (O&M)

Date of Decision: April 27, 2022

Jagir Chand and another ...Petitioners

Versus

Punjab Wakf Board and others

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Keshav Pratap Singh, Advocate
for the petitioners.

Mr. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate
for the respondents.

FATEH DEEP SINGH, J. (Oral)

The background of the litigation in the instant civil revision by petitioner Jagir Chand and his brother Baljinder Singh both sons of Banarsi Dass (deceased) who have come up in this civil revision challenging the judgment and decree dated 03.01.2007 passed by the learned Tribunal under the Wakf Act where in a suit for permanent injunction filed by the then plaintiffs of whom the present petitioners are one of the parties.

In this suit a decree for permanent injunction was sought against Punjab Wakf Board restraining the defendants-Punjab Wakf Board and its officers from dispossessing the plaintiff forcibly and illegally from the land measuring 67 Kanals 17 Marlas.

The claim of the plaintiffs is that they are in cultivating possession of the land as tenants at the rate of Rs.350/- per annum and forced over the threatened illegal act of the respondents in dispossessing them had led to the filing of the present suit.

The defendants in their stand taken in the written reply reiterated the fact that the Punjab Wakf Board was the owner of the land in question which was leased out with the plaintiff Banarasi Dass on annual lease amount of Rs.12,000/- and thereafter his death, his legal heirs failed to get lease renewed or pay the lease amount and, thus, were deemed to be in illegal possession of 67 Kanals and 13 Marlas of land (in fact they were leased out only 51 Kanals and 15 Marlas).

A counter claim was made by way of suit for possession of the land in question.

The following issues were framed by the trial Court:-

- 1. Whether the plaintiffs are in legal and authorised possession of the land in dispute measuring 67 kanals 13 marlas as detailed in the head note of the plaint ? OPP.*
- 2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP.*
- 3. Whether the defendant Punjab Wakf Board is entitled to possession of the land in dispute from the plaintiffs.*
- 4. Relief.*

The plaintiffs examined PW1 Baljinder Singh one of the sons of deceased Banarsi Dass and closed the evidence while on behalf of the respondents DW1 Mohammad Idrish, Estate Officer alongwith DW2 Jameel Khan, Rent Collector were examined and thereafter the evidence was closed.

It is consequent thereupon findings were returned holding that the plaintiffs have no right to retain the possession of the land in question and dismissed with costs the suit.

It is thereafter the present petition has come about challenging the judgment.

Appreciating the submissions of the two sides, it is there in the records that the main plea for the decree for permanent injunction was dismissed, the learned Tribunal had allowed and decreed the counter claim with costs and directed the plaintiffs to hand over the vacant possession of the suit in dispute measuring 67 Kanals 13 Marlas. The primary question arises that the plaintiffs in stead of filing the two challenges first to the dismissal of the claim for permanent injunction by way of the suit and secondly on account of decreeing of the counter claim whereby a decree for possession was passed against them can file only a single legal recourse?. In the light of the same, a moot point arises whether in such a case one appeal/revision ought to have been filed or challenge to both

these orders separately need to be made.

Though on behalf of the petitioner Mr. Keshav Pratap Singh has sought to claim being a composite decree there is no need to file two appeals or revisions and to support his contentions he has placed reliance on **Sri Gangai Vinayagar Temple and another Vs. Meenakashi Ammal and others** 2015(2) W.L.N. 124, **Harbans Singh and others** Vs. **Sant Hari Singh and others,** AIR 2009 Supreme Court 1819 and **Harjeet Singh and others** Vs. **Mehar Singh** 2010 (4) CivCC 568.

Mr. Pawan Kumar, Senior Advocate assisted by Mr. Surya Kumar, Advocate has sought to reiterate that where there are two issues in a suit which are quite distinct and findings on one of the claims is against the party who invokes the jurisdiction of this Court needs to file two separate legal recourses and for which has sought support from **Cholapilakkal Abdul Nazer Vs. Kuttanparambath K. Laxmana and another** 2016(3) Ker. L.J. 429 and RSA No. 3505 of 2019 **(O&M)** titled

as Rajesh Kumar Vs. **Dharamraj Singh** and connected revision decided on 03.09.2019.

Now before this Court on one hand the suit is for permanent injunction by the plaintiff present petitioner who are successors in interest of the alleged lease holder Banarasi Dass to which suit the then defendants now respondents Punjab Waqf Bard had filed a counter claim seeking possession of the land which was earlier under lease as well as the excess land on which the plaintiff have trespassed and therefore there are two distinct findings and both are against the revisionist plaintiffs. It is not put to question that the ownership of the land in question vests with the Punjab Wakf Board and that the lease holders did not pay rent after 1999-2000 till date nor the lease stands renewed. It is not successfully controverted by the counsel for the petitioner that the decree or possession passed in counter claim has not been challenged till date.

This Court seeks support from Sri Gangai Vinayagar Temple and another case, *ibid*, relied by the

learned counsel for the respondents whereby the Hon'ble Apex Court in a similar situation has held as follows:-

20. On the issue of applicability of res judicata in cases where two or more suits have been disposed of by one common judgment but separate decrees, and where the decree in one suit has been appealed against but not against the others, various High Courts have given divergent and conflicting opinions and decisions. The High Court of Madras and erstwhile High Courts of Lahore, Nagpur and Oudh have held that there could be no res judicata in such cases whereas the High Courts of Allahabad, Calcutta, Patna, Orissa and erstwhile High Court of Rangoon have taken contrary views. It should also be noted that there are instances of conflicting judgments within the same High Court as well. The decision of Tek Chand, J. in Full Bench Judgment of the Lahore High Court in Lachhmi vs. Bhulli [AIR

1927 Lahore 289] and Full Bench Judgment of the Madras High Court in [Panchanda Velan vs. Vaithinatha Sastrial](#) [ILR (1906) 29 Mad 333] and of the Oudh High Court in [B. Shanker Sahai v. B. Bhagwat Sahai](#) [AIR 1946 Oudh 33 (FB)] appear to be the leading decisions against the applicability of res judicata. Without adverting to the details of those cases, it is sufficient to note that the hesitancy or reluctance to the applicability of the rigorous of res judicata flowed from the notion that Section 11 of the Code refers only to “suits” and as such does not include “appeals” within its ambit; that since the decisions arrived in the connected suits were articulated simultaneously, there could be no “former suit” as stipulated by the said section; that substance, issues and finding being common or substantially similar in the connected suits tried together, non-filing of an appeal against one or more

of those suits ought not to preclude the consideration of other appeals on merits; and that the principle of res judicata would be applicable to the judgment, which is common, and not to the decrees drawn on the basis of that common judgment”.

and by virtue of which it was held by the Apex Court where challenge to the second findings are not made, principle of *res judicata* as enshrined in Section 11 CPC would come into play and therefore the plaintiffs are barred from laying challenge to the findings in the counter claim which they never impugned before any Court against initial findings against them and even the Hon'ble Apex Court in **Harbans Singh and others** case, *ibid*, similar preposition was held where following observations have been made:-

“12. Appellant herein does not claim any right, title and interest in his individual capacity. He was the Vice-President of the Managing Committee. Thus, for all intent and purport, he was also a plaintiff in

Civil Suit No. 367-T/1996. The judgment and decree passed in the suit filed by Sant Hari Singh might not have been binding upon the appellant herein had he claimed any right or interest over the said property in his individual capacity and not as a member of the Managing Committee. Indisputably, the Managing Committee did not file any Second Appeal against the judgment and decree passed against it. The said judgment and decree, therefore, attained finality.

13. Both the suits, as noticed hereinbefore, were consolidated. They were heard together. The disputes between the parties to both the suits were common. The issues raised therein also were common.

The Managing Committee filed a suit for declaration that it was in management and control of the said Gurudwara Sahib and was entitled thereto as also a declaration that the respondent was not a Mohtmim

of the said Gurudwara and, thus, not entitled to manage its affairs. As the said decree had attained finality, it is binding on the appellants also. Appellants, therefore, in law, were required to prefer another Second Appeal against the judgment and decree passed in the said suit. The principle of res judicata in the aforementioned fact situation, in our opinion, has rightly been applied by the High Court”.

In view of the foregoing reasons and discussion detailed above, the findings of the learned lower Court certainly needs to be upheld and there being no merit in the instant revision petition, the same stands dismissed.

April 27, 2022

amit rana

**(FATEH DEEP SINGH)
JUDGE**

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No