

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

RSA-758-2019 (O&M)

Date of Decision: November 15, 2023

AJMER SINGH AND ORS

.....Appellants

Versus

DALIP SINGH AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. V.D. Sharma, Advocate for the appellants.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 14.10.2015 and 26.07.2018 passed by the Courts below whereby, a suit for declaration and permanent injunction, filed at the instance of appellants-plaintiffs stands dismissed.

2. Briefly stating, the appellants-plaintiffs filed a suit for declaration, claiming themselves to be owner in possession of the suit property forming part of Khasra No.1522 (2 kanal and 2 marla) situated within municipal committee area of Narwana, District Jind, later bifurcated into 1522/1 (1 kanal and 5 marla) and 1522/2 (17 marla).

3. In response, a written statement was filed on behalf of respondents, raising the plea of res judicata while submitting that previously a suit for partition was filed among the co-sharers, including the parties in dispute wherein, their rights were determined by the Hon'ble Apex Court vide judgment/order dated 04.07.2011, passed in SLP-14319-2011 titled as "**Balbir Singh Vs. Prabhu Ram**" and thus a plea that the present suit being barred by principle of res judicata, was raised.

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4. The trial Court vide order dated 21.07.2014 framed the following preliminary issues:-

- “1. Whether the present suit is barred by the principle of res judicata? OPD
2. Whether the present suit is not legally maintainable? OPD”

In pursuance thereof, the parties were afforded opportunity to lead their respective evidence. Accordingly, respondents-defendants produced on record all the judgments and decrees passed in previous litigations arising out of suit for separate possession by way of partition whereas, the appellants-plaintiffs produced on record jamabandis as well as the sale deed in favour of their predecessor.

5. The trial Court vide judgment and decree dated 14.10.2015 dismissed the suit filed at the instance of appellants-plaintiffs while holding it to be barred by the principle of res judicata. Aggrieved thereof, the appellants-plaintiffs filed First Appeal, however, the same was also dismissed vide judgment and decree dated 26.07.2018.

6. Impugning the aforementioned judgments and decrees passed by the Courts below, the only argument raised in the present appeal is that the issue of res judicata being a mixed question of law and fact could not have been treated as preliminary issue and thus, findings recorded by the Courts below were illegal and perverse. In support, reliance has been placed on the judgments passed by this Court in **CR-1810-1984** titled as “**Smt. Ram kali Vs. Sohan Lal**” and **CR-1957-2003** titled as “**Surinder Mohan Vs. Baldev Singh**”

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7. I have heard learned counsel for the appellants and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the appellants.

8. In the present case, having framed the issue of res judicata and treating the same as preliminary by the trial Court, the parties were afforded opportunity to lead their evidence in support thereof and thus, it was not a case wherein, the issue of res judicata was adjudicated upon simply on the basis of pleadings available on record and without affording an opportunity to the parties to lead their evidence. Once the issue of res judicata was dealt with by the Courts below having afforded an opportunity of leading evidence to both the sides, the argument raised at the instance of appellants-plaintiffs is wholly misconceived.

9. In the given facts and circumstances, once the parties were afforded opportunity to lead their respective evidence on the issue of res judicata, the judgments cited on behalf of the appellants-plaintiffs were not applicable. Moreover, a comparative perusal of the plaint in the present suit and the judgment and decree dated 28.01.2011, passed by this Court in RSA-3957-2009(Ex. D3 and Ex. D-4) show that the property in dispute and the parties were the same whereby, their rights were finally decided/determined as regards their entitlement and share in the suit property, arising out of the previous suit for separate possession by way of partition, filed at the instance of respondents No.18-19/defendants No.18-19 herein. Even an SLP arising out of

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judgment and decree dated 28.01.2011 passed by this Court in RSA-3957-2009 titled as “**Prabhu Ram and Anr. V/s Balbir Singh and Ors.**” was dismissed by Hon’ble Apex Court vide order dated 04.07.2011 thus, making it final *inter se* the parties as their rights regarding the suit property.

10. In view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is thus dismissed.

11. Pending application(s), if any, shall also stand disposed of.

15.11.2023
tejwinder

(**HARKESH MANUJA**)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>