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

**CR-1291-2023 (O&M)**

**Date of Decision: 27.02.2023**

Harbir (Deceased) Th. LRs

....Petitioner

Versus

Sehdev Singh and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:** Mr. Shilak Ram Hooda, Advocate  
for the petitioner.

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**ARUN MONGA, J. (ORAL)**

Petition herein is for setting aside order dated 13.01.2023 (Annexure P/4) passed by Ld. Additional Civil Judge (Sr. Division), Bahadurgarh, whereby application dated 27.09.2019 (Annexure P-1) filed by defendant/petitioner under Section 11 and Order 2 Rule 2 CPC has been dismissed.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Plaintiff/respondent filed a suit for declaration with consequential relief of permanent injunction declaring Will dated 14.06.2007 as illegal, null and void and that the defendant/petitioner be restrained from interfering into the peaceful possession of plaintiff/respondent over the suit land or from alienating the same in any manner. Petitioner/defendant filed a reply stating that the family of Banwari Lal @ Goga and Sumer Singh, the deceased husband of petitioner/defendant were the members of Joint Hindu family.

The subject matter of the suit was agricultural land of the share of Banwari Lal @ Goga which was bequeathed by Banwari Lal by way of executing a registered Will dated 14.06.2007 in favour of son of Sumer Singh.

2.2. Earlier civil suit was filed by Rajinder son of Phule, the coparcener and real brother of deceased Banwari @ Goga son of Phule challenging the aforesaid Will i.e. the subject matter of present case. Learned Trial Court vide judgment and decree dated 23.08.2012 dismissed the aforesaid civil suit and in appeal preferred by Rajinder, the Ld. Lower Appellate Court without giving any finding on the said Will, subject matter of present suit, remanded the case to the Ld. Trial Court holding the suit to be bad for non-joinder of necessary parties. Being aggrieved, the deceased son namely Harbir Singh of defendant/petitioner filed SAONo.19 of 2015 in this Court, which was disposed of vide judgment dated 14.12.2022, setting aside the impugned order of Ld. Lower Appellate Court with directions to decide the appeal of defendant/petitioner on merits in accordance with law.

2.3. Petitioner/defendant filed application under Section 11 and Order 2 Rule 2 CPC praying for staying further proceedings in the present suit stating that the present suit is hit by doctrine of *resjudicata* on the ground that the core question of Will is being examined by higher Courts i.e. the Ld. District Judge, Jhajjar and this Court. Plaintiff/respondent filed reply to the said application. Though vide judgment passed in SAO No.19 of 2015 this Court had set aside the judgment dated 14.01.2015 passed by Ld. District Judge, Jhajjar and directed the Ld. Lower Appellate Court to decide the appeal of defendant/petitioner on merits. The Ld. Trial Court vide impugned

order dated 13.01.2023 dismissed the application under Section 11 and Order 2 Rule 2 CPC filed by the petitioner who is claiming that the instant suit was hit by *resjudicata*.

3. I have heard learned counsel for defendant/petitioner and I am unable to persuade myself with the contention that Ld. Trial Court ought not to proceed with the suit in hand in view of other suit bearing No.164 of 2002, which has already been adjudicated and the first appeal against that decision, is still *subjudice*. It is trite law that in order to invoke the principle of *resjudicata* as envisaged under Section 11 and the provisions of Order 2 Rule 2 CPC, there are two fundamental essentials viz. a) parties to the subsequent suit must be same as or claiming under them as in the suit filed prior thereto; b) issues involved in the prior suit are substantially similar if not same as in the subsequent suit.

4. In the present case, not only the parties to the suit in hand are not same in the former suit but even otherwise the stand taken by plaintiffs/respondents is that the earlier decree was an act of collusion between one Rajender(*defendant No. 15 in the present suit and plaintiff in the former suit*) and the original petitioner i.e. Harbir and the same can not therefore act as an bar on plaintiffs/respondents in subsequent suit in hand to seek their legal remedy which is based on their independent rights qua the suit property.

5. In the premise, I am of the view that Ld. Trial Court has rightly rejected the application filed by petitioner/defendant under Order 2 Rule 2 CPC as the same fails on the touchstone of the principle envisaged

thereunder. The relevant part of findings given by Ld. Trial Court are as under:-

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10. In considering the scope of the doctrine of res judicata, we must bear in mind the general principle on which it is founded. This principle, which is called by its Latin name of res judicata and which was evolved and developed by the jurists of ancient India under the title of prang nyaya ("previous decision"), prevents a party from re-agitating a dispute which has already been decided between the parties. The principle is not a technical doctrine but based upon equity, justice and common sense. Its object is to prevent endless litigation and the repeated harassment of a party which has obtained a decision from a court of competent jurisdiction in its favour after a fair hearing.

11. What it says is that once a *res judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or on a question of law has been decided between two parties in one suit or proceeding and the decision is final either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. (Reliance placed on *Arjun Singh Vs. Mohinder Singh & Ors.* 1964 AIR 993, 1964 SCR (5) 946).

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18. On next aspect of former suit and later suit between same parties or litigating under the same title or persons claiming under the parties, the pleadings of former suit and present suit lead to conclusion that the parties between former suit and later suit were not same as none of the plaintiffs is legal heirs of Rajender (defendant No. 15 in the present suit and plaintiff in the former suit). Although, the plaintiff's are also claiming their rights being legal heirs of Banwari but because they were not parties to the previous suit and have not been impleaded as parties to that suit till date, they cannot be stopped from coming to civil court for getting their right settled. Therefore, the parties

*in former suit and the present suit cannot be said to be same or claiming through the same parties or litigating under the same title or persons.*

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I need add nothing more to aforesaid reasoning rendered by Ms. Varsha Sharma, learned Additional Civil Judge (Senior Division). Appreciatingly, while authoring the impugned order she has gone into the very genesis of the legal concept and discussed Latin vis-à-vis ancient Indian doctrines which form the very basis thereof, evolving with time into the modern principle of *Res Judicata*. Nothing further survives for adjudication before this Court.

6. There is no room for interference in the valid reasons recorded by Ld. Trial Court in exercise of extraordinary revisional jurisdiction.

7. Petition is dismissed being devoid of merit.

8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

**(ARUN MONGA)**  
**JUDGE**

**February 27, 2023**  
*ashish/mahavir*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No