

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 21 of 1991 (O&M)

Ram Chand (Deceased) through his Legal Representatives
... Appellant(s)
Versus
Gurbhajan Singh and Others
... Respondent(s)

2. C.O.C.P. No. 1805 of 2017

Gurpreet Singh
... Petitioner(s)
Versus
Gurbhajan Singh and Others
... Respondent(s)

3. C.O.C.P. No. 86 of 2021

Gurpreet Singh
... Petitioner(s)
Versus
Gurbhajan Singh and Others
... Respondent(s)

AND

4. C.O.C.P. No. 931 of 2022(O&M)

Gurbhajan Singh
... Petitioner(s)
Versus
Gurpreet Singh and Others
... Respondent(s)

Reserved On: 28.07.2023
Pronounced On: 09.08.2023

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CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Neha Jain, Advocate
for Mr. Krishan Singh Dadwal and Mr. Rahul Sharma,
Advocates, for the appellant (In RSA-21-1991),
for the petitioner(s) (In COCP-1805-2017 and COCP-86-2021).

Mr. Ashwani Chopra, Senior Advocate
with Ms. Gurpreet Kumar Bhatti and Mr. Gurbhajan Nagar,
Advocates, for the respondent No.1 and 2(In RSA-21-1991),
for the respondent No.1 (In COCP-86-2021) and for the
petitioner (In COCP-931-2022).

Anil Kshetarpal, J.

1. A batch of four cases consisting of a regular second appeal and three contempt petitions has come up for final disposal.

2. In the regular second appeal, the concurrent findings of fact arrived at by both the Courts below are challenged by the plaintiff. In the various petitions filed for the initiation of the contempt proceedings, it is alleged that there has been disobedience/violation of the interim orders passed in the regular second appeal. The learned counsel representing the appellant admits that these petitions filed for the initiation of the contempt proceedings would practically become infructuous once the regular second appeal is decided.

4. In order understand the controversy involved in the present case, the relevant facts, in brief, are required to be noticed.

5. Late Sh. Ram Chand filed a civil suit for grant of decree of declaration against his two grandsons, namely Gurbhajan Singh and Harbhajan Singh and another person Ashok Kumar. It is claimed that the plaintiff is owner in possession of the land measuring 40 kanals and 2 marlas described in the caption of the suit. While alleging that the (the plaintiff)

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never appointed defendant No.3 as his general power of attorney, he prayed for ignoring the sale deeds executed by the defendant No.3 on his behalf in favour of the defendant No.1 and 2 on 17.02.1983. The plaintiff claimed that he along with his wife was forcibly taken away by his own son Anant Ram accompanied by Shankar Dass, Madan Lal and Jagdish from the residence of one of his sons Jai Ram and thereafter, they, under duress, obtained the thumb impressions of the plaintiff on some blank papers. The defendants are suspected of converting thumb marked blank papers into a general power of attorney and other valuable transactions. After a period of nearly 2½ months, the plaintiff and his wife were dropped off at village Nawan Pind Taporian by their son Anant Ram.

6. On the other hand, the defendant No.1 and 2, while filing the joint written statement, claimed that the plaintiff is not the owner of the suit land and in fact, the defendant No.1 is the owner of the land measuring 20 kanals and 1 marla, whereas the defendant No.2 is the owner of the land measuring 20 kanals and 3 marlas. On 13.02.1983, the plaintiff appointed the defendant No.3 as his attorney while authorizing him to alienate the property. Subsequently, the defendant No.3 sold the land in favour of the defendant No.1 and 2, respectively, by executing two separate sale deeds. The defendant No.3 claimed that he was appointed as an attorney by the plaintiff authorizing him to sell the land which was accordingly transferred.

7. Both the Courts below, on the appreciation of the evidence, have dismissed the suit.

8. Heard the learned counsel representing the parties, at length and with their able assistance, perused the judgments passed by both the Courts

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below along with the requisitioned record and the written arguments submitted by the learned counsel representing the parties.

9. While reiterating the oral arguments, the learned counsel representing the appellant has submitted as under:-

“A. Findings returned in the Judgment, Ex. PX, in Para 23 are binding upon the Respondents by virtue of the principle of res judicata.

i) *Res Judicata applies even amongst co-defendants [Re: Mahboob Sahab v. Syed Ismail and Others. (1995) 3 SCC 693 (Para 8)]*

ii) *The reasoning of the Ld. Trial Court that since documents were not exhibited and proper evidence was not led in the Judgment, Ex. PX, res judicata will not apply is erroneous. Merely because a party has been negligent or the decision is wrong and cryptic, it cannot be said that the principle of res judicata will not be applicable. [Re: (i) Makhija Construction and Engg. (Pvt.) Ltd. v. Indore Development Authority, (2005) 6 SCC 304 (Para 16 to 18); (ii) Talluri Vankata Seshayya v. Thadikonda Kotoswara Rao, AIR 1937 PC 1 (Para 7 and 8)].*

iii) *The reasoning of the Ld. Appellant Court that the principle of res judicata will not apply if the suit itself is dismissed and the defendants had no opportunity to file an appeal is wrong. Even if suit has been dismissed, the*

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*principle of res judicata will apply [Re: **Sham Nath Madan v. Mohammad Abdullah**, AIR 1967 J&K 85 (Para 7 and 8)].*

- iv) *Res Judicata will apply even if the no. of parties in the Judgment, Ex. PX, were 6 (including the Plaintiff, Jai Ram), while in the present suit there are only 4 parties. The findings qua the issue of the Power of Attorney, Ex D1, and the Sale Deeds concerned Ram Chand (original owner), Ashok Kumar (power of attorney), Gurbhajan Singh (purchaser) and Harbhajan Singh (purchaser). All of them are parties to both the proceedings. [Re: **Pandit Ishwardas v. State of Madhya Pradesh**, (1979) 4 SCC 163 (Para 7)- "In order to sustain the plea of res judicata it is not necessary that all the parties to the two litigations must be common. All that is necessary is that the issue should be read between the same parties or between parties under whom they or any of them claim.]*

B. The facts of case otherwise prove that the Power of Attorney, Ex. D1, was not validly executed.

- a) *Surinder Kaur, d/o Jai Ram, had reported the matter to the police station Balachaur on 10.2.1983 itself regarding the kidnapping of Ram Chand. (Ex.PA-Rojnamcha Report).*
- b) *Ex. PC is the Report of the Warrant Officer wherein it is recoded that "After a short time, they began to talk and I*

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enquired from Ram Chand detenue as to when he had come to the village. He told me that Anant Ram and his son had left them there in the Village yesterday evening near about 4 pm (27.04.1983). On my further enquiry Ram Devi, detenue told me that they were taken by Anant Ram and 3 other men 2 or 2 ½ months back, from the Village, who were armed with pistols and sword and we remained with Anant Ram through this time and we were also taken to Beas Sat Sang twice by Anant Ram.

- c) Anantram was a policeman, while Gurbhajan Singh s/o Anant Ram is an Advocate practising in the same Court where the Power of Attorney. Ex D1, was prepared.*
- d) Ram Chand-Plaintiff was more than 90 years of age.*
- e) Date of execution of the Attorney is 13.2.1983, which was actually a Sunday and therefore, there was no occasion for drafting the petition in the court premises.*
- f) No evidence was produced on record to prove the factum of sale price having been paid and as to from where the amount was received.*
- g) The entire story is otherwise improbable. If the plaintiff wanted to execute Sale Deeds in favour of his grandsons, he could have done it without giving the power of attorney to a stranger, Ashok Kumar.*
- h) Ex PY shows that in a suit filed by Gurpreet Singh, son of*

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Jai Ram, Mohan Lal has appeared as DW3 and stated that "This Mukhtiarnama was not registered in my presence"... "Ram Chand met me at Beas for the first time about 10/15 days prior to the execution of Mukhtiarnama"... "I do not know why the address of Ram Chand has been given in the Mukhtiarnama as 355 Nwan Mohalla, Ludhaina" (Page 459 of the LCR). This testimony is contrary to the testimony of DW3, Mohan Lal, in the present suit."

10. On the other hand, the relevant part of the written note submitted by the learned counsel representing the respondents is reproduced as under:-

"Only two arguments have been raised, firstly, of res judicata and secondly, Power of Attorney, Ex.D1, is not validly executed as per the facts. In response the submissions are as under:-

i) A bare perusal of CPC Section 11 clearly shows that the provisions of res judicata are not all attracted in the present case. The intention of doctrine of res judicata is clear from the bare wording of the provisions of Section 11 CPC, which shows that no Court shall 'try' 'any suit' or 'issue' in which the matter 'directly and substantially' in issue in the former suit between the same parties etc, under the same title in a Court competent to try subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided.

The object and purpose of the legislature is that the precious

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time of the Courts in the trial of the subsequent suit is not unnecessarily consumed by the litigants and that is why the legislature in his wisdom has categorically barred any Court to try any suit or issue which has been finally decided. In other words, the intention of the legislature is that after the decision in a former suit, the same issue involving directly and substantially the same matter between the same parties or claiming under the same title, no Court shall 'try' the subsequent suit or the same issue but intention of the legislature is not that if two suits are being simultaneously tried in two different Courts, and if one is decided prior, the other Court would be debarred from deciding the said suit which has been tried by it and is at the stage of arguments and even the judgment has been reserved. The explanations in Section 11 if read together further crystallizes the intention of the legislature. The expression 'former suit, as explained in Explanation No.1 is explained to mean a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto in the humble submission of the Respondent would mean that prior to the trial of the later suit. In fact the bar under Section 11 is to the trial of the suit. To substantiate, so many provision wherein the word try/trial is used would show the intention of the legislature e.g. under Order 6 Rule 17 the proviso to the Rule says that no application for amendment shall be allowed after the trial has commenced

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and as such, the principle of res judicata as provided in Section 11 cannot be stretched to a case where the trial of the suit has already been completed. The Hon'ble Supreme Court in the case of Vidya Bal versus Padma Latha, AIR 2009 SC 1433, has held that filing of an affidavit in lieu of examination-in-chief of a witness would amount to commencement of trial. It means that the bar is to even commence the trial that is why Section 11 lays down that no Court shall try any suit or issue and that the plea of res judicata as per the Supreme Court judgment is necessarily required to be raised in the pleadings. Admittedly, in the present case the former suit which though decided few days prior to the present suit cannot be abruptly brought to an end after full trial when the same is at the final stages of arguments etc. Admittedly, the suit in which judgment-Ex.PX was passed, was instituted on 12.03.1983 i.e. 2 months prior and the trial of both suits went on simultaneously in different Courts and the suit filed by Jai Ram was decided on 20.10.1986 and the present suit was decided on 18.02.1987, and the judgment was placed before the Trial Court on 23.02.1987 (As apparent from date and signature of the Ld. Trial Court Judge on the margin of Ex.PX in the record of the present case).

ii) Without prejudice to the above and an addition thereto it is submitted that the issue of res judicata is a mixed question of facts and law and as such, anybody taking help of the provisions of res judicata has to plead it in the pleadings i.e.

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plaint/written statement, filed in the Trial Court itself. Admittedly, in the present case no plea whatsoever was taken by Ram Chand, the Plaintiff, in the plaint. Nor the same was argued before the Ld. Trial Court. Hon'ble Supreme Court in the case of Smt. V Rajeshwari versus T.C. Saravanabava (2004) 1 SCC 551 has held that the pleas of res judicata is founded on the proof the certain facts then by applying the law, the facts so found it is, therefore, necessary that foundation for the plea must be laid in the pleading and then an issue must be framed and tried. A plea not properly raised in the pleading or in issue at the stage of trial would not be permitted at the stage of the appeal (Para 11 and 12).

iii) In the first appeal which was before the First Appellate Court, which is filed Jai Ram as LR of Ram Chand, this point has been raised. The issue of res judicata being a mixed issue of facts and law could not be raised without following the provision of the Code of Civil Procedure.

iv) Admittedly, the first suit pertains to the claim of Jai Ram with regard to only 8K 7M and that too on the basis of a family settlement. The Ld. Court in the said judgment has negative the plea of family settlement and held that no title passes to the Plaintiff in the said case and he could not held as owner, and further that is not permissible by FBC Publishing Pvt. Ltd. law to allow Ram Chand to give his son Jai Ram in family settlement (last three line at Pg. 103 and top line at Pg.104).

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Further it is held that Jai Ram was not in possession, the suit was accordingly dismissed with costs. As a matter of fact Issue No.1 framed in the said suit was the material issue and the entire claim revolves around the Plaintiff being owner in possession, which admittedly not at all involved in the present suit. It is pertinent to mention here that the Trial Court in the said suit has categorically held that it was a suit for declaration and not suit for cancellation of the sale deeds (Last line at Pg.105).

v) *The judgment relied upon by the Appellant in Mehboob Sahab versus Syed Ismail and Others, (1995) 3 SCC 693, relied upon by the Appellant is not attracted to the facts of the present case. In the said case, the judgment and decree which was sought to be considered for operation of res judicata was passed on 24.09.1951, whereas, the later suit was filed much later. This case is not a case where the former suit was simultaneously filed and tried but decided a little prior to the suit in question. Further, as per the decision in the said case dealing with the application of the doctrine between Co-defendants, the very first ingredient held to be necessary is that there must be a conflict of interest between the Defendants concerned, and the same is not there in the present case inasmuch as in the suit filed by Jai Ram, Ram Chand-Defendant No.1 had pleaded that the suit should be dismissed as was pleaded by the other Defendants in their respective*

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written statement. The claim in the suit filed by Jai Ram was based on family settlement in which there was no conflict of interest between the Co-defendants. Even the second ingredient that it must be necessary to decide the conflict in order to give the relief which the Plaintiff claims, is also missing in the present case and as such, res judicata shall not apply inasmuch as even if there is conflict between the Defendants, that has to be such which must be necessarily required to be decided before giving relief to the Plaintiff. Admittedly, in the former suit the claim primarily was on the basis of family settlement and that issue having been decided against the Plaintiff i.e. Jai Ram, it was not necessary to decide the collateral issue because that was not substantially or directly required for deciding the substantial issue of family settlement.

vi) The other judgments cited in support of the plea of res judicata are also not attracted to the facts of the present case. In the present case since the issue relating to sale deed was being taken up in the suit filed by Ram Chand, who was claiming him to be owner in possession and claiming that he never executed the GPA and consequently the sale deeds were null and void. The said issue was the substantial issue in the said suit and not in parallel suit and that is why entire evidence including the documents etc. were produced in the suit filed by Ram Chand. The findings of fact arrived at by the Court below are to be read in conjunction with the findings recorded by the

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Courts. Moreover, it is not the case of the Appellant that any material evidence has been misread.

vii) The second contention raised by the Appellant is that Power of Attorney, Ex.D1, as per the fact has not been proved to the validly executed. It is humbly submitted that finding of fact has been concurrently arrived at by the Courts below. In RSA the plea to challenge the same is not available. The report of the Warrant Officer and the alleged Roznamcha Report which admittedly had not be pursued also shows that the same is outcome of the collusion of Jai Ram with Ram Chand and the issues have been raised by Ram Chand at the instance of Jai Ram. The report of the Warrant Officer etc. have been taken note of by this Hon'ble Court. In fact, this Hon'ble Court had dismissed the habeas corpus petition filed by Jai Ram. The material on record clearly establishes that Ram Chand had given the GPA to Defendant No.3-Ashok Kumar and he had validly executed the sale deeds, and it is only thereafter that the story of abduction have been propounded at the instance of Jai Ram. The other pleas sought to be raised are pure and simple findings of facts.

viii) It may be added that the Regular Second Appeal has been filed only by Jai Ram, whereas Ram Chand who had died during the pendency of the appeal before the First Appellate Court, was substituted by his Jai Ram and Anant Ram, as is apparent from the copy of the judgment and decree of the First

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Appellate Court, filed in the present appeal itself and both the legal representatives of Ram Chand have conflicting interest. Moreover, neither the consent of Anant Ram has been alleged much placed before filling the appeal, especially when the claim in the suit by Ram Chand was his personal relief.”

11. Now, this Court proceeds to analyze and evaluate the arguments of the learned counsel representing the parties.

12. The first argument of the learned counsel representing the appellant is based on the applicability of the doctrine of *res judicata*. It is solely based on the previous judgment (Ex.P1) in which the findings of fact have been recorded that the aforesaid power of attorney was the result of coercion and misrepresentation. Hence, it becomes incumbent upon the Court to carefully examine the judgment (Ex.PX) which is a part of the trial Court's record. Ex.PX is a copy of the judgment passed in a Civil Suit No. 44 of 1983 filed by Jai Ram (another son of Ram Chand). In that suit, Ram Chand, Anant Ram, Gurbhajan Singh, Harbhajan Singh and Ashok Kumar were the defendants. Jai Ram filed a suit for grant of a decree of declaration to the effect that he is an owner in possession of the land measuring 8 kanals and 7 marlas. A copy of the pleadings of the aforesaid suit has not been filed. From the perusal of para 3 of the judgment (Ex.PX), it is evident that defendant No.1-late Sh. Ram Chand entered appearance in the aforesaid suit and stated that as alleged, the possession of the land was never given to the plaintiff and he is not the owner of the suit land, as alleged. A prayer was made to dismiss the suit. In that suit, on the appreciation of the pleadings,

the following issues were culled out for adjudication:-

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- “1. *Whether the plaintiff is the owner in possession of the suit land as alleged? OPP.*
2. *Whether the Snit is maintain able the present form? OPP.*
3. *Whether the plaintiff hes locus standi to file this suit? OPP*
4. *Whether the suit is hit by the principle of res judicata, as alleged? OPD.*
5. *Whether defendant No.5 is a validly appointed attorney of defendant No. 1, as alleged? OPD.5*
6. *Whether the plaintiff is estopped from suing, as alleged? OPD*
7. *Whether the suit is collusive with defendant No.1? OPD.*
8. *Whether defendant No.5 had executed sale deeds dated 17.2.83 in favor of defendant No. 3 and 4 for consideration? OPD*
9. *Is issue No.5 & B are proved, whether the power of attorney and sale deeds are the result of fraud coercion and misrepresent and are void, as alleged? OPP*
10. *Whether the snit is properly valued for purposes of Court fee and jurisdiction? OPP.*
11. *Relief.”*

13. Issue No.5 was decided by the Court against the defendants. However, ultimately, the previous suit was dismissed. Simultaneously, Ram Chand also filed a suit, which, as noticed above, was dismissed by both the

Courts below.

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14. For the application of the doctrine of *re judicata* between the co-defendants, four conditions must be satisfied, namely - (i) there must be a conflict of interest between the defendants concerned, (ii) it must be necessary to decide the conflict in order to give relief that the plaintiff claims, (iii) the question arising between the co-defendants must have been finally decided and (iv) the co-defendants were the necessary and proper parties in the former suit. The aforesaid tests were laid down by the Supreme Court in *Mahboob Sahib v. Syed Ismail and Others (1995)3 SCC 693*. In this judgment, reliance upon the judgment passed in *Syed Mohd. Saadat Ali Khan v. Mirza Wiquar Ali Beg AIR 1943 PC 115*, *Shashibhushan Prasad Mishra v. Babuji Rai (1969) 2 SCR 971* and *Iftikhar Ahmed v. Syed Meharban Ali (1974) 2 SCC 151* was placed. If the aforesaid four tests are applied to the facts of the present case, it becomes evident that there was no conflict in between the various co-defendants in the aforesaid suit. All the defendants (i.e. 1 to 5) prayed for the dismissal of the suit. There was no distinct issue with regard to *inter se* conflict between the various defendants. Moreover, the suit filed by the plaintiff was dismissed, therefore, the appellant has no right to file the appeal.

15. Keeping in view the aforesaid facts, it would not be appropriate to hold that the findings in para 23 of the judgment (Ex.PX) operate as *res judicata* between the co-defendants, therefore, the Court must hold that the general power of attorney was the result of coercion.

16. In view of the aforesaid discussion, the reasoning given by the trial Court as well as the First Appellate Court may not be justified,

however, this Court, on the basis of independent reasons, finds that the

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doctrine of *res judicata* cannot be applied. This Court has also carefully perused the power of attorney (Ex.P1). This power of attorney was executed on 13.02.1983, whereas it was registered on 14.02.1983. Late Sh. Ram Chand has thumb marked the power of attorney at a place where the recitals end. He also appeared before the Sub Registrar on 14.02.1983 and appended two more thumb impressions at the time of registration. It is not the case of the plaintiff that on 14.02.1983 he did not appear before the Sub Registrar. Moreover, a complaint case was filed alleging that the plaintiff and his wife were kidnapped and, thereafter, thumb impressions of the plaintiff were taken forcibly. On 10.07.1984, when he appeared in the Court of Sh.P.C.Suman, he made a statement. The Court asked the plaintiff about the aforesaid incident, but he denied. Consequently, in the criminal case, the accused were acquitted. In this suit, when he was confronted with his statement, he maintained that he never made such a statement. Moreover, it is the case of the plaintiff that he along with his wife stayed with the family of his son Anant Ram upto 27.04.1983 i.e. for a period of nearly 2½ months. In these circumstances, the conclusion drawn by both the Courts below appears to be correct as late Sh.Ram Chand, after having voluntarily executed the general power of attorney started taking a different stand after he returned to the village.

17. The Court is not persuaded by the second argument of the learned counsel that the entire story is improbable. The grandfather has nominated a power of attorney to transfer the property in favour of his grandson. This transfer cannot be said to be improbable at all.

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well as the Scribe have deposed in favour of the defendants. The last argument of the learned counsel stating that this power of attorney was not registered in the presence of one of the marginal witnesses has no substance because he was witness to the power of attorney which was executed on 13.02.1983, but registered on 14.02.1983.

18. Keeping in view the aforesaid facts and discussion, no ground is made out to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, the appeal as well as the petitions for the initiation of the contempt proceedings are dismissed.

19. The miscellaneous application(s) pending, if any, in all the four cases, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

August 09, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No