

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

CR-4314-2019 (O&M)

Date of decision: 27.01.2023

Gurcharan Singh and others

...Petitioners

Versus

Jaswant Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Aakash Singla, Advocate for the petitioners.

None for the respondents.

H.S. MADAAN, J.

A suit was filed by plaintiff Jaswant Kaur and her daughter Kiranjeet Kaur against Gurcharan Singh, husband of plaintiff No.1 as well as Amritpal Singh, Kulwinder Singh, Gurpreet Singh and Jeet Singh, all residents of Village Jahagir, Tehsil Dhuri, District Sangrur, praying for grant of permanent injunction, restraining the defendants from dispossessing the plaintiffs from the suit land illegally and forcibly without due course of law. Such suit having been filed in the Court of Civil Judge (Jr. Divn.) Dhuri.

2. On getting notice, the defendants appeared and filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint and initiation of action against the plaintiffs for perjury in terms of Sections 340 and 195 Cr.P.C. According to the defendants, the plaintiff

No.1 had filed a civil suit bearing No.89 of 26.04.2011 titled as 'Gurcharan Singh Vs. Jeet Singh' against defendants No.1 and 5 seeking relief of permanent injunction restraining the defendants No.1 and 5 from forcibly dispossessing Gurcharan Singh son of Hazura Singh from the suit property. Gurcharan Singh son of Hazura Singh is reported to have expired with plaintiffs stepping into footsteps of Gurcharan Singh, therefore, the instant suit by legal heirs of Gurcharan Singh regarding the same property is barred by principle of res judicata, therefore, the plaint is liable to be rejected. A photocopy of judgment and decree passed in Civil Suit No.89 of 26.04.2011 decided on 22.12.2014 was attached therewith.

According to the defendants, the plaintiffs have filed the suit regarding that very property, which was subject matter of earlier suit No.89 of 26.04.2011 which had been dismissed, vide judgment and decree dated 22.12.2014. That fact had been intentionally concealed by the plaintiffs from the Court. In that way, committed offence of perjury.

3. That application was resisted on behalf of the plaintiffs.
4. After hearing arguments, the trial Court of Civil Judge (Jr Divn.) Dhuri, vide impugned order dated 09.05.2019 had dismissed the application. The operative part of the order is being reproduced as under for ready reference:-

“ After hearing the contentions of both the sides and perusing the case file, it is fairly concluded that previous suit between the party with regard to the permanent

injunction which was dismissed. However the issue of res judicata with regard to the suit on permanent injunction cannot be held to be applicable. Moreover, when the legal heirs for come up to seek a relief of permanent injunction against those only against whom they alleging threat perceptions on basis of alleged started by sufficient grounds as pleaded by them in their plaint. The case cannot be thrown out in the limine without proper adjudication on merits. The relief of permanent injunction can arise at any time. In case the relief of permanent injunction is not found in any previous litigation, it does not mean that the the threat perception would have come to an end for all times to come in future. Therefore, the present plaintiff is the legal representative of Gurcharan Singh son of Hazura Singh. As such they do have chances to possess threats from separately and as such have separate right which shall be decided in the light of evidence on the basis of cogent and convincing evidence. The present application being devoid of merits is hereby dismissed.”

5. Feeling aggrieved by the said order, the defendants have approached this Court by way of filing the present revision petition, notice of which was given to the respondents, who had initially put in appearance but subsequently stopped appearing.

6. I have heard learned counsel for the revision petitioners besides going through the record.

7. A perusal of the record goes to show that the defendants

had filed an application under Order 7 Rule 11 CPC mainly taking up plea that a similar suit filed by the plaintiffs regarding this very land had been dismissed, therefore, according to the defendants, the second suit filed was barred by principle of res judicata which cannot proceed and the plaint deserves to be rejected for that reason.

However, the Apex Court in a recent judgment **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors.**, 2021 (3) RCR (Civil) 768 has observed that res judicata is not a ground to reject the plaint under Order 7 Rule 11 (d) CPC.

Therefore, the plaint could not be rejected for such like reason and request was rightly declined by the trial Court.

8. When learned counsel for the petitioners was confronted with such position, he submitted that the suit is barred under Order 9 Rule 9 CPC and Section 10 CPC also. He stated that although the defendants in the application filed by them have not specifically mentioned that suit is barred by Order 9 Rule 9 CPC, however, a perusal of the application seeking rejection of plaint filed by the defendants goes to show that no such specific objection has been taken therein. It being so, this Court while exercising revisional jurisdiction cannot make out a new case for defendants that the suit is hit by Order 9 Rule 9 CPC as well as Section 10 CPC. If the defendants so desired, they could have taken a specific objection in that regard in the application but it was not so done and now the revision petitioners

want the Court to do this job for them, which cannot be done. Such type of objections may be taken before the trial Court and not before the High Court when it is exercising revisional jurisdiction.

Learned counsel for the petitioners has referred to judgments Shekhar Verma Vs. Raj Gupta & Ors. in CR-5173-2017 decided on 04.12.2018, A.E. Rathina Naicker Vs. V. Thirumalai, 2017 (4) MLJ 40, Vinod Kumar Singh & Ors. Vs. Devraj Singh & Ors., 2015(35) RCR (Civil) 319 and Ramesh Kumar Sharma Vs. The Ambassador, Royal Netherlands Embassy, 2002(1) SCT 761.

9. The judgments are not applicable due to different facts and circumstances and the context in which such observations have been made. The order passed by the trial Court is quite detailed, well reasoned and it does not suffer from any illegality or infirmity. No reason is there to interfere with such order by exercising revisional jurisdiction. The revision petition is found to be without merit and is dismissed accordingly.

27.01.2023
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No