

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 2844 of 2023(O&M)
Date of Decision: 21.09.2023

Jagbir Singh

...Appellant

Versus

Jasbir Singh & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. J.S. Bedi, Advocate
For the appellant.

KARAMJIT SINGH, J.

1. The present regular second appeal has been filed by the appellant/ plaintiff against the order dated 25.07.2019 whereby the application filed by respondents under Order 7 Rule 11 CPC was allowed and the plaint was rejected on the ground that the suit filed by the appellant/ plaintiff was barred by principle of *res judicata* and judgment dated 08.05.2023 whereby the appeal filed by the appellant/ plaintiff against the aforesaid order dated 25.07.2019 has been dismissed by the Court of Additional District Judge, Panipat.

2. The counsel for the petitioner while assailing both the impugned orders has, *inter alia*, contended that it requires recording of evidence to decide the issue of *res judicata* and the suit could not be disposed of at very initial stage on the ground that the same is hit by principle of *res judicata*, simply on the basis of the averments made in the plaint. In support of his contentions, the counsel for the petitioner has placed reliance upon the judgments of Hon'ble Supreme Court in **Soumitra**

Kumar Sen Vs. Shyamal Kumar Sen, 2018(2) RCR(Civil) 223 and

**Shakti Bhog Food Industries Limited Vs. Central Bank of India & Anr.,
2020(3) PLR 487.**

3. I have considered the submissions made by counsel for the petitioner.

4. There is no doubt regarding the law laid down by the Hon'ble Apex Court in afore cited judgments which are referred by counsel for the petitioner in support of his contentions. It is settled position of law that for the purpose of disposal of an application filed under Order 7 Rule 11 CPC, the Court can only consider the averments made in the plaint and at most the documents produced along with the plaint. While dealing with such an application the defence taken by the defendant cannot be considered by the Court concerned. The Hon'ble Apex Court in Civil Appeal No. 5841 of 2023 (Keshav Sood Vs. Kirti Pradeep Sood & Ors.) decided on 12.09.2023 has held that the issue of *res judicata* requires a detailed examination of various elements, including the pleadings in the previous suit and the issues involved in the previous litigation and the judgments passed by the trial Court and the Appellate Courts in the said earlier litigation. In order to prove the plea of *res judicata*, it requires to be substantiated by producing the copies of the pleadings, issues and judgment in the previous litigation and as such the question of *res judicata* cannot be decided simply by going through the averments made in the plaint.

5. In light of the above discussion, the impugned orders dated 25.07.2019 passed by the Court of Civil Judge (Sr.Divn.), Panipat and dated 08.05.2023 passed by the Court of Additional District Judge, Panipat are not sustainable being not passed in conformity with settled position of law, as has been discussed above.

6. Resultantly, the appeal is allowed and both the impugned orders are hereby set aside. The trial Court is directed to proceed with the suit and dispose of the same in accordance with law after issuing notice to the defendants. The petitioner is directed to appear in the learned trial Court for further proceedings on 10.10.2023.

7. Keeping in view the circumstances mentioned above, this petition is being disposed of without issuing any notice to the opposite party. If respondents are summoned to contest this litigation, they will have to incur huge expenses to defend this case. However, liberty is granted to the respondents that if they feel dissatisfied with this order, they may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

21.09.2023

Jiten

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No