

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

**RSA No.5831 of 2019 (O&M)
Date of Decision:06.01.2023**

Saroj Sheel

.....Appellant

Vs.

Amarjit Kaur and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Aman Bansal, Advocate and Ms. Anjali Bansal,
Advocate for the appellant.

DEEPAK GUPTA, J.

This appeal filed by the plaintiff of the case is against the concurrent findings of the Courts below, whereby her suit for declaration and permanent injunction, regarding property in dispute, was dismissed. To avoid confusion, the parties shall be referred as per their status before Ld. trial Court.

2 (a) The facts of the case, in brief, as pleaded by the plaintiff- appellant are that her marriage with Major Rasan Sheel was performed in the year 1946. Three sons were born out of this marriage. As Major Rasan Sheel developed extra marital relationship with another woman, a mutual settlement was executed on 4.05.1972 between plaintiff and her husband, as per which plaintiff was to reside separately along with her sons. The suit property was given to her. Major Rasan Sheel also assured to pay ₹350/- per month for her maintenance. This agreement resulted into ex parte decree of divorce dated 26.04.1974. Major Rasan Sheel then re-married one Kamla

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Chatterjee. In 1979, Major Rasan Sheel came back to Yamuna Nagar along with his second wife and threatened to dispossess the plaintiff from the suit property, which compelled her to file a civil suit No.194/1979 for permanent injunction, which was decreed on 18.01.1982. Ever since then, she has been residing peacefully in the suit property as owner. She even got ejected a tenant residing in the part of the suit property.

(b) After death of Major Rasan Sheel, all the three sons recognised plaintiff's right of residence as sole owners in the suit property and suffered a decree dated 16.03.1996 in her favour in Civil Suit No.787/1995.

(c) It is pleaded further that defendant No.4 is sister of plaintiff's husband Major Rasan Sheel, who succeeded in obtaining his signatures on blank paper and utilised them for forging a Will dated 04.07.1989, in which suit property was willed in favour of said defendant No.4. On the basis of another Will of the year 1990, defendant No.4 procured judgment dated 21.02.2002 in a probate case in her favour. One more Will dated 05.01.1991 was executed in favour of persons, who had served Major Rasan Sheel till his death.

(d) In 2006, defendant No.4 threatened to forcibly dispossess the plaintiff from suit property, due to which she filed injunction suit No.186/2006, which was dismissed on 20.02.2008. Plaintiff pleads that during subsistence of second marriage of Major Rasan Sheel with Smt. Kamla, a joint Will dated 23.03.1979 was executed by them for the benefit of survival of part of the suit property. For the last about four months, some persons claiming to be authorised representatives of defendants No.1 to 3, have been threatening to dispossess the plaintiff from the suit property on the basis of

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purchasing it from defendant No.4. Municipal Corporation, Yamuna Nagar sought her reply for changing the property in the name of defendants and despite her objection, suit property was changed in their name and hence, this suit for declaration that plaintiff is the absolute owner in possession of the suit property and to restrain the defendants from interfering in her possession or to dispossess her.

3. Defendants No.1 to 3 filed the joint written statement; whereas defendant No.4 filed separate written statement. All of them raised some preliminary objections, particularly relating to res-judicata. They pleaded on merits that plaintiff was never in possession of the suit property. The injunction suit filed by the plaintiff against defendant No.4 and other was dismissed by the trial Court vide judgment dated 20.02.2008. A legal and valid Will dated 10.09.1990 was executed by Major Rasan Sheel in favour of his sister i.e. defendant No.4. Defendant No.4 got a probate decree on the basis of this Will from learned trial Court, New Delhi on 21.2.2002, pursuant to which she became owner in possession of the suit property. It is pleaded further that the decree dated 16.03.1996 suffered by the sons of the plaintiff is null and void, as they did not have right, title or interest in the suit property. No Will dated 05.01.1991 was ever executed. Plaintiff filed another suit for permanent injunction regarding the same property against defendant No.4 – Somi Rani, which was dismissed on 20.02.2008. Appeal against that judgment was dismissed by the Appellate Court on 01.05.2009. Defendants No.1 to 3 also pleaded that they have purchased suit property from defendant No.4 by way of different sale deeds for valuable consideration. Denying title, possession or any other concern of the plaintiff

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with the suit property, prayer was made by all the defendants for dismissal of the suit.

4. Following issues are framed by the learned trial Court for adjudication:-

1. Whether the plaintiff is owner in possession of the suit property?OPP
2. Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP
3. Whether the order dated 21.02.2002 has been obtained fraudulently and the same is null and void and not binding upon the rights of the plaintiff?OPP
4. Whether the plaintiff is entitled to the relief of Permanent Injunction?OPP
5. Whether the present suit is not maintainable?OPD
6. Whether the suit is barred by the principle of Res-judicata?OPD
7. Whether the plaintiff is estopped from filing the present suit by her own act and conduct?OPD
8. Relief.”

5. After taking evidence produced by the parties in support of their respective stand, matter was heard by learned trial Court. Issues No.1, 2, 3 and 4 were taken up together for discussion and all were decided against the plaintiff, by holding that she had no concern with the suit property and further that suit is barred by the principle of res-judicata under Section 11 CPC. Under Issue No.5, suit was held to be not maintainable due to

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statutory bar of res-judicata. Finding on Issue No.6 went against the plaintiff. Issue No.7 was disposed of as not pressed for. Consequent to all these findings, suit was dismissed vide judgment dated 28.10.2014 by the learned trial Court. Appeal filed by the plaintiff against the said judgment and decree was dismissed by First Appellate Court vide judgment and decree dated 29.08.2019 by affirming the finding of the trial Court that suit was barred by principles of res-judicata.

6. Assailing the above said concurrent findings by way of this appeal, it is contended that issues No.1, 2, 3 and 4 were wrongly clubbed by the trial Court. These issues should have been separately and distinctly discussed to meet the ends of justice. The learned trial Court did not look into the mutual agreement dated 04.05.1972 Ex.P14, through which half portion of the house in dispute was given to the appellant for her residence in recognition of her right to maintenance. Besides, possession of the plaintiff- appellant was well established in view of the municipal record, which has not been looked into. The evidence produced by the defendants has been wrongly believed to hold the suit to be barred by res-judicata. The learned trial Court also did not consider the aspect of various Wills executed by Major Rasan Sheel, which clearly indicated that the alleged Will relied by defendant No.4 was the result of fraud played by her upon her brother. After the death of Major Rasan Sheel, suit property devolved upon his legal heirs, i.e. sons, who suffered decree in favour of their mother i.e. Plaintiff-appellant but none of these aspects have been considered by the Courts below. With all these submissions, prayer is made to set aside the impugned judgments and decrees passed by the Courts below and to decree the suit of

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the appellant- plaintiff by accepting this appeal.

7. Needless to say that upon notice, respondents- defendants made appearance through their counsel and contested the appeal. They defended the impugned judgments and decrees and submitted that there is no ground to reverse the concurrent findings recorded by the learned trial Court against the appellant.

8. I have considered the submissions of both the sides and have perused the record carefully.

9. It is not in dispute that parties have litigated earlier. So, the main question to be determined is whether the findings recorded in earlier litigation, operate as res-judicata in the present lis or not, because plaintiff-appellant has been non-suited by both the Courts below on this ground itself.

10. It is revealed that plaintiff- Saroj Sheel has earlier filed Civil Suit No.186 of 2006 seeking a decree of permanent injunction against defendant No.4 of this case i.e. Somi Rani and one Mansa Ram regarding the property in dispute. In that suit, title and possession of the plaintiff was denied by defendant Somi Rani, who had claimed her own title on the basis of Will dated 10.09.1990 and had also pleaded that she had obtained probate decree dated 21.02.2002 on the basis of that Will. In view of the disputed title, amongst others, following issue was framed:-

“Whether the plaintiff is owner in possession of the suit property?OPP”

11. The above said suit was dismissed by the learned Additional Civil Judge (Senior Division) Yamuna Nagar vide judgment dated 20.02.2008, copy of which is Ex.D6 on record. Appeal against the said

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judgment and decree was filed by the plaintiff – Smt. Saroj Sheel bearing CA No.64 of 2008 but the same was dismissed by learned Additional District Judge, Yamuna Nagar on 01.05.2009, as is evident from Ex.D8.

12. Prior to the aforesaid litigation, Somi Rani (Defendant N: 4 of present case) had filed a petition under Section 276 of the Indian Succession Act, 1925 for grant of probate in respect of Will dated 10.09.1990 of her brother Major Rasan Sheel in the Court of learned Additional District Judge, Delhi. Not only plaintiff of this case Smt. Saroj but also all her three sons were impleaded as a party to that petition. That petition bearing case No.348 of 2001 titled 'Dr. Somi Rani Vs. Saroj and others', was allowed on 21.02.2002, as is evident from Ex.D16.

13. In the present case, plaintiff- Smt. Saroj Sheel did not enter the witness box. Rather, one of her sons Deep Sheel appeared as PW3 as her General Power of Attorney and he admitted in cross-examination that probate of the Will was granted in favour of defendant Somi Rani. He further admitted that no appeal was filed against that order.

14. The only feeble contention raised by Ld. counsel for the appellant is that judgment and decree dated 20.02.2008 Ex.D6 with regard to the title of the suit property, was passed in a suit for permanent injunction and not in a suit regarding declaration of title and so, the finding with regard to the title is not binding.

15. I am afraid that contention is devoid of any merit. In ***Ananthula Sudhakar Versus P. Buchi Reddy (dead) by LRs and others, 2008(3) Civil Court Cases 294 (SC)***, it has been held by Hon'ble Supreme Court that where plaintiff has filed a suit for permanent injunction simplicitor but the

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defendant in rebuttal raises a serious doubt over the title of the plaintiff, then the plaintiff is required either to amend the pleadings and convert into one for declaration or in the alternative to withdraw the suit for bare injunction and file a comprehensive suit for declaration and injunction. Reference was also made to *Sajjadanashin Sayed Md. Vs. Musa Dadabhai Ummer, 2000(1) Civil Court Cases 712*, wherein it was held that where title to property is the basis of right of possession, a decision of title on the question of possession is res-judicata on the question of title to the extent that adjudication of title was essential to the judgment but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title.

16. In *Sulochana Amma Vs. Narayanan Nair, 1994(1) Civil Court Cases 383(SC)*, it has been held that a finding as to title given in an earlier injunction suit can operate as res-judicata in a subsequent suit for declaration of title. This is based on a premise that in some suit of injunction, where a finding of possession is solely dependent upon the finding of issue of title, it can be said that issue of title was directly and substantially in issue for consideration of the case. In *Gram Panchayat of Village Naulakha Vs. Ujagar Singh and others case 2001 (1) CCC 1*, it has been held by Hon'ble Supreme Court that where it is established that finding on title was necessary in an earlier suit for granting or refusing the injunction, then the said finding on the title would operate as res-judicata. In *Rukmani Vs. Narender, AIR 1984 SC 1866*, it has been held by Hon'ble Apex Court that judgment of probate Court is a judgment in rem and conclusive proof about the validity of the Will.

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17. In view of the legal position as above, which has been duly taken note of by learned First Appellate Court, there can be no dispute in holding that present lis instituted by the plaintiff was barred by principle of res-judicata. All other contentions as raised by the appellant- plaintiff that other Wills were not taken into consideration; or that her sons had suffered a decree in her favour are barred by the principle of constructive res-judicata as per Explanation 4 to Section 11 of the Code of Civil Procedure, as all these issues could be raised by the plaintiff in the earlier litigation.

18. In view of the aforesaid discussion, I find absolutely no reason to interfere in the concurrent findings recorded by both the Courts below. Holding the present appeal to be devoid of any merit, the same is hereby dismissed with costs.

January 6, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No