

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8347-2019 (O&M)
Date of decision: 25.01.2023

Raj Kumar Asaudhiya

...Petitioner

Versus

Harish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.S.R.Hooda, Advocate,
For the petitioner.

None for respondent, despite service.

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India is for setting aside the order dated 23.09.2019 (Annexure P-4) passed by learned Civil Judge (Junior Division), Sonapat vide which application dated 14.05.2019 (Annexure P-2) filed by respondent/defendant for dismissing the suit of petitioner/plaintiff on the ground of maintainability, was allowed.

2. Civil suit was filed by petitioner/plaintiff for permanent injunction against respondent/defendant seeking to restrain him from interfering in the peaceful ownership and possession *qua* the suit property or putting any hurdle in construction work of plaintiff over the suit property in any manner.

3. Brief facts first, as pleaded in the revision petition.

3.1. Petitioner/plaintiff purchased a plot of 200 square yards in question for a total sale consideration of Rs.16 lakh vide registered sale deed dated 30.05.2013. Thereafter, petitioner constructed boundary wall up to the height of 5'5" around it. Respondent started interfering in the peaceful

possession of the petitioner and, therefore, petitioner filed suit for permanent injunction.

3.2. Respondent also filed a civil suit for declaration with consequential relief of permanent injunction and the same was decreed vide judgment and decree dated 06.08.2018. Respondent-defendant moved an application dated 14.05.2019 for dismissing the suit on the ground of maintainability, which was later withdrawn. Thereafter respondent filed another application for dismissal of suit on the ground of maintainability on the basis of decree dated 06.08.2018 contemplating that matter in dispute is between the same parties regarding same property. Petitioner filed reply dated 18.05.2019 (Annexure P-3), but to no avail. Vide impugned order dated 23.09.2019 (Annexure P-4), learned trial Court allowed the above said application. Hence, the instant petition.

4. Learned counsel for the petitioner contends that judgment and decree passed by learned trial Court in civil suit has not attained finality as appeal against the said decree is pending before the First Appellate Court.

5. None has caused appearance on behalf of respondent, despite service.

6. I have heard learned counsel for petitioner and gone through the case file.

7. Briefly stated, the contentions herein are that the cause of action and the relief sought in both the suits are not the same and that the appeal against the judgment/decreed dated 06.08.2018 in previous suit is pending adjudication before the learned Additional District Judge, which is a continuation of the suit and thus the judgment dated 06.08.2018 is not final adjudication of the controversy.

8. To my mind, there is no merit in these contentions. Under section 11 of CPC, no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties in a court competent to try such suit and has been heard and finally decided by such court. Explanation II below the section *ibid* provides that for its purpose, the competence of the court shall be determined irrespective of any provisions as to a right of appeal from the decision of such court.

9. It is not disputed that the matter directly and substantially in issue in the suit giving rise to the instant petition has been directly and substantially in issue in the aforesaid former suit between the same parties. In my opinion the learned trial Court has taken a correct view of the facts and applicable law and rightly passed the impugned order, which does not call for any indulgence by this Court.

10. Order dated 23.09.2019 assailed herein is premised, *inter alia*, on the following reasoning:

“Plaintiff has filed this suit for restraining the defendant from interfering into the peaceful ownership and possession qua the suit property detailed in para no.1 of the plaint or putting hurdle in construction work of the suit property. The suit property has been described in para no.1 of the plaint. There is no denial of the fact that judgment and decree dated 06.08.2018 was passed and parties to the suit were parties in that suit also. In the previously instituted suit the defendant (of the present suit) held to be entitled for declaration that he is exclusive owner in physical possession of the suit property detailed in para no.1 of the plaint and defendant (plaintiff of the present suit) is restrained from interfering into the possession of the plaintiff over the suit property. Issue no.1 was framed as to whether the plaintiff (defendant of the present suit) is entitled to a decree for permanent injunction. The plaintiff of the present suit has filed written statement and in the written statement the description of the suit property is same as provided in the present suit. The issue regarding the possession over the suit property was decided vide judgment and decree dated 06.08.2018 and the issue regarding the possession over the suit

property was squarely covered in the previously instituted suit now the present suit has been decided vide decree dated 06.08.2018. The parties to the suit and the cause of action are same. The matter in the present suit was substantially in issue in the previously instituted suit filed by the defendant against the plaintiff. The matter has been heard and finally decided by the court in the first suit. Though the appeal is pending, however, this Court has the parallel civil jurisdiction and the matter is dispute has already been decided, hence the suit of the plaintiff is barred by the principle of res judicata, hence, the application for dismissing the suit on non-maintainability stands allowed.”

11. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court.

12. There is thus no room for interference in the valid reasons recorded by learned trial Court, with which I am in agreement.

13. No grounds are made out to interfere.

14. Dismissed. However, dismissal of the petition shall not come in the way of the petitioner to seek appropriate remedy before learned First Appellate Court where the appeal is pending against the judgment and decree dated 06.08.2018 rendered by learned trial Court in an earlier suit proceedings owing to which the subsequent suit was held to be barred under law. In case, petitioner chooses to do so, learned First Appellate Court shall proceed in accordance with law.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

25.01.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No