

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.107

Case No. : C. R. No. 7624 of 2023

Date of Decision : December 16, 2023

Savitri and others Petitioners

vs.

Rameshwar and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Surinder Gandhi, Advocate
for the petitioners.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 09.10.2023 (Annexure P-7), passed by learned Civil Judge (Junior Division), Jhajjar (for brevity – the Trial Court), whereby application under Order 7 Rule 11 CPC, filed by defendants/petitioners, for rejection of plaint, has been dismissed.

2. The brief facts, as culled out from the paper-book, are that plaintiffs/respondents filed a Civil Suit dated 12.02.2011 against the defendants/petitioners, which was dismissed vide judgment and decree dated 24.02.2015 (Annexure P-1). Appeal against the said judgment and decree was filed on 11.03.2015, which was allowed vide judgment dated 31.08.2018. Since there was a clerical error in the said judgment passed in the appeal, the defendants/petitioners moved application for correction and the said error was rectified vide order dated 13.10.2018. The

plaintiffs/respondents did not file any regular second appeal against the judgment and decree dated 31.08.2018 or the order dated 13.10.2018. Rather, they filed another Civil Suit No.835 of 2018 dated 27.09.2018 (Annexure P-4). So, the defendants/petitioners moved application dated 20.11.2018 (Annexure P-5) for rejection of plaint of the plaintiffs/respondents as the matter stood already adjudicated and the new suit filed by the plaintiffs/respondents was not maintainable. The said application has been dismissed by the learned Trial Court vide impugned order dated 09.10.2023.

3. Learned counsel for the petitioner has submitted that there was no fresh cause of action to file the second suit. Hence, the learned Trial Court has committed error in dismissing the application filed by the defendants/petitioners for rejection of plaint as the second suit on the same cause of action is not maintainable.

4. I have heard learned counsel for the petitioners and perused the case file.

5. Earlier, plaintiffs/respondents filed suit against Jagdish Chander (predecessor-in-interest of petitioners no.1 to 3) and petitioners no.4 and 5 (all were defendants before the learned Trial Court) for permanent injunction. In the said case, plaintiffs/respondents pleaded that they are exclusive owners in possession of the disputed plot shown by letters ABCD in red colour, situated within *abadi deh* of the village. One of the issues framed in the said case was :-

“1. *Whether the plaintiffs are entitled for a decree for permanent injunction by*

restraining the defendants from interfering into the peaceful possession of the plaintiffs upon the suit land? OPP

6. The said suit was decreed vide judgment and decree dated 24.02.2015 (Annexure P-1) and a decree of permanent injunction in favour of plaintiffs/respondents was passed by restraining the defendants/petitioners from interfering in possession of the plaintiffs/respondents over the plot, as mentioned in site plan (Ex.P-1), except in due course of law. In para no.22 of the said judgment, it has been specifically held that –

“22. Thus, from the part of documentary evidence of previous litigation on behalf of the ancestors of the plaintiffs, it stands proved on record that neither plaintiffs nor their ancestors have been owners of the disputed plot but the defendants have been owner of the same.”

7. Defendants/petitioners filed appeal against the aforesaid judgment and decree dated 24.02.2015, which was allowed vide judgment and decree dated 31.08.2018 (Annexure P-2). The plaintiffs/respondents had also filed cross-objections that the findings recorded by the learned Trial Court in respect of the sale deed dated 28.05.2001 are against law and facts and the Court has erred in declaring the said sale deed as legal and valid. The cross-objections were dismissed. The second suit has been filed for declaration and consequential relief of permanent injunction on the ground that plaintiffs/respondents are owners in possession of the plot, with boundaries, as mentioned in para no.1 of the plaint (Annexure P-4). The question is whether the suit is barred by res-judicata or not. In the case Syed

Mohd. Salie Labbai (Dead) by LRs vs. Mohd. Hanifa (Dead) by LRs

reported as (1976) 4 SCC 780, it is held that before a plea of res-judicata can be given effect, the four conditions require to be proved. These conditions are :

- “1. The litigating parties must be the same.*
- 2. The subject matter of the suit also must be identical.*
- 3. The matter must be finally decided between the parties.*
- 4. The suit must be decided by a court of competent jurisdiction.”*

8. So, for proving the said conditions, pleadings of the previous both the suits are required to be taken into consideration. In Swamy Atmandanda vs. Sri Ramakrishna, Tapovanam reported as (2005) 10 SCC 51, it was held by Hon’ble Supreme Court that :

“26. The object and purport of principle of res judicata as contended in Section 11 of the Code of Civil Procedure is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment.

27. The principle of res judicata envisages that a judgment of court of concurrent jurisdiction directly upon the point would create a bar as

regard a plea between the same parties upon some other matter directly in question in another court and that the judgment of the court of exclusive jurisdiction direct in point.”

9. Since the questions involved in the instant case are : whether the findings of lis are barred by res judicata or not and title is decided or not, these are the questions which can only be decided by learned Trial Court in view of Section 11 CPC. At the time of passing order under Order 7 Rule 11 CPC, the Court is only to see the averments in the plaint and not beyond that.
10. The learned Trial Court has rightly dismissed the application under Order 7 Rule 11 CPC. I do not find any infirmity, perversity or illegality in the same. Accordingly, there is no merit in the present revision petition and the same is accordingly dismissed in limine. However, the defendants/petitioners are at liberty to take all the pleas, in the written statement, before the learned Trial Court and to agitate the question of res judicata there, as and when so advised.
11. The findings recorded above are only for the decision of this revision petition only and are not binding on any other proceedings.
12. Pending applications, if any, shall stand disposed of along with this judgment.

December 16, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.