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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5481-2024
Date of decision:07.03.2024

JASKARANVIR SINGH @ JASKARAN SINGH AND ANR

...Petitioners

Versus

JOINT DEVELOPMENT COMMISSIONER (IRD) AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Vikas Singh, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. Dr. Puneet Kaur Sekhon, Advocate, appears on behalf of respondent No.3-Gram Panchayat, under vakalatnama, and, the same is taken on record.
2. Four persons, namely Arvinder Singh, Mahinder Singh, Joginder, and, Hukam Singh (applicants before the Collector), filed a petition under Section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”), thus against the Gram Panchayat Tarain Block Sanaur, Tehsil and District Patiala, wherebys they espoused the rendition of a declaratory decree in their favour, thus in respect of the suit lands.

3. Through a decision made on the said application (Annexure P/3), the learned Collector concerned, non suited the said applicants, thus for the reason which becomes extracted hereinafter.

“The counsel for the respondent party in its arguments produced copy of the order dated 26.4.2005 passed by Collector (Divisional Deputy Director), Rural Development and Panchayats Patiala as per which applicant no. 1 Arvinder Singh son of Karnail Singh has earlier filed a petition under Section 11 of the Punjab Village Common Lands Act, 1961 regarding Khasra No.576 min (4-5), 584 min (4-5), 576 min (2-0), 582(6-5), 584 min (2-0), 586 min (6-5), 583(6-5) total measuring 31 Bighas 5 Biswas, but the same was dismissed by the Collector, Patiala on 26.4.2005. In this manner the principal of res judicata is applicable to the case. The petition filed by the applicant is not maintainable and is therefore dismissed”

4. The aggrieved from Annexure P-3 preferred an appeal thereagainst before the Joint Development Commissioner (IRD) Rural Development and Panchayat Department Punjab. To the said appeal became assigned appeal No.161/2015. Through a decision made on the said appeal (Annexure P-5), the competent appellate authority concerned, after affirming Annexure P-3, proceeded to dismiss the appeal (*supra*).

5. Consequently, the present petitioners who are successors-in-interest of applicants namely Joginder Singh and Hukam Singh, are led to make a challenge to the concurrently made verdicts respectively, embodied in Annexures P-3 and P-5, whereby the applicants have been non suited.

6. A reading of the reason which became assigned by both the authorities below reveals, that the authorities below applied against the co-applicant Arvinder Singh, the estopping principle of *res judicata*, and, premised the same on the ground, that since his earlier motion cast against

under Section 11 of the Act became declined, thereby he was barred to re-raise a petition under Section 11 of the Act. The reason to the extent (*supra*), and/or, in other words only in respect of one Arvinder Singh, it may be said to be well founded or can be said to be well premised. However, the said principle has been omnibusly applied even *qua* the other co-applicants inasmuch as, it has also been applied against co-applicants Mahinder Singh, Joginder Singh and Hukam Singh, who were not arrayed as co-plaintiffs or as co-petitioners in the earlier motion, which was raised singularly by co-petitioner Arvinder Singh.

7. The omnibus application of the said principle of constructive *res judicata*, whereby the litigants common in the earlier and in the subsequent *lis*, thus are barred to re-raise a motion which earlier has been conclusively and finally decided, but necessarily requires that all the litigants in the earlier and the subsequent *lis* thus are arrayed, as such, in such earlier and subsequent *lis*'. Therefore, if apart from Arvinder Singh the other co-petitioners were also arrayed in the earlier *lis*, thereby they along with one Arvinder Singh were also barred by the estopping principle of constructive *res judicata*, to re-recourse an earlier motion which they earlier failingly recoured. However, when except Arvinder Singh, the others not joining the earlier *lis*, thereby the principle of *res judicata* was required to be made singularly applicable vis-a-vis Arvinder Singh, and, was not required to be made applicable against other co-applicants, who became arrayed as co-applicants, as in the earlier *lis* they were not parties therein.

8. In consequence, the said omnibus application of principle of the *res judicata* to all the co-applicants is a mis-founded and a gross misapplication of the said principle.

9. In the face of the above, the instant petition succeeds, and, is allowed, but with a modification that except qua Arvinder Singh the principle of *res judicata* shall not apply to the other co-petitioners.
10. Since only on the above mis-founded premise, both the statutory authorities below, have non suited all the applicants, whereas, only one Arvinder Singh was required to be non suited, thereby the *lis* is remanded to the learned Collector concerned, who shall after restoring the *lis* to its original number, cause the deletion of one Arvinder Singh from the array of applicants therein, or in the relevant *lis*, whereafter he shall proceed to, in accordance with law make a well speaking decision on the remanded *lis*, but after hearing all affected persons concerned.
11. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

07.03.2024
Ithlesh

(RITU TAGORE)
JUDGE

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