

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2716-1989

Niranjan Singh @ Nanju

.....Appellant

Vs.

Beeru Ram

.....Respondent

Reserved On.: 14.03.2024
Pronounced On: 08.04.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Bhavnik Mehta, Advocate
for the appellant.

Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Vidul Kapoor, Advocate for the respondent.

DEEPAK GUPTA, J.

This Regular Second Appeal is directed against the judgment and decree dated 02.09.1989 passed by learned District Judge, Jalandhar i.e. First Appellate Court, whereby Civil Appeal N: 605 of 1987 filed by defendant Beeru Ram (*respondent herein*) was allowed, setting aside the judgment and decree dated 15.06.1987 of learned Trial Court, whereby the Civil Suit N: 539 of 1985 filed by the plaintiff Niranjan Singh (*appellant herein*) had been decreed. Resultantly, the suit was dismissed by the appellate court. Thus, this RSA is against reversal by the First Appellate Court of the judgment of the trial Court.

2. Lower Court record was called and the same has been perused. In order to avoid confusion, parties shall be referred as per their status before the

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trial Court.

3.1 Subject-matter of the suit is a “*Tour*” marked by letter ‘ABCD’ and shown in red colour in the site plan attached with the plaint and detailed & described in head-note of the plaint. Plaintiff Niranjan Singh claimed to be owner of the suit land. According to him, he had earlier 1/3rd share in the suit property. He had filed a civil suit for partition *qua* his 1/3rd share against the other co-sharers/collaterals. That suit was decreed vide judgment dated 13.01.1980 (Ex.P8). Appeal filed by one of the defendant Nazir Singh against that judgment, was dismissed by the Appellate Court on 16.07.1982 (Ex.P10). Subsequently, plaintiff purchased respective shares from his other collaterals by virtue of sale deeds dated 14.03.1983 and this way, he became exclusive owner of the entire suit property.

3.2 Further case of the plaintiff was that during pendency of the aforesaid proceedings, defendant tried to take forcible possession of the suit property. Plaintiff filed a civil suit for permanent injunction. In the meantime, defendant succeeded in taking the possession and in the written statement, took the plea of adverse possession. Suit of the plaintiff was dismissed by the trial Court on 15.4.1983 and plea of defendant was upheld to the effect that he had become owner of the suit property by way of possession. Plaintiff filed appeal [CA N: 261 of 1984] against said judgment, which was dismissed by the Appellate Court on 18.09.1985 (Ex.P12) but finding was recorded that defendant Beeru Ram had not become owner by adverse possession and rather, his possession was illegal and as a trespasser and that plaintiff was entitled to recover possession.

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3.3 It further emerges that defendant Beeru Ram had filed an independent suit for declaration to have become owner of the suit property by way of adverse possession. That Civil Suit N: 110 of 1983 titled “Beeru Ram v. Nanju” was decreed on 19.10.1983 (Ex.D1). No appeal was filed against the said judgment.

3.4 In the present suit, plaintiff prayed for decree for possession of the suit property being owner thereof.

4. Defendant contested the suit. He raised objection that suit was barred by principal of *res judicata* on account of a finding in his favour vide judgment dated 19.10.1983 to the effect that he had become owner of the suit property by way of adverse possession and that that suit was between the same parties and no appeal had been filed against that.

5. Following issues were framed by the Trial Court :-

1. Whether the plaintiff is owner of the suit property? OPP
2. Whether the plaintiff has got no locus-standi to file the present suit?
OPD
3. Whether the suit as framed is not maintainable? OPD
4. Whether the suit is barred by the principle of res-judicata?OPD
5. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP
6. Whether the defendant has become owner of the suit property by adverse possession? OPD
7. Whether the suit is within limitation? OPP
8. Whether the plaintiff is entitled to the possession as prayed for? OPP
9. Relief.

6. Trial Court found that plaintiff was owner of the disputed property

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to the extent of 2/3rd share and that possession of the defendant had not matured into ownership. It was further held by the Trial Court that suit was not barred by principal of *res judicata*, by referring to “***M. Kunhirama Kurup and others v. Mayyarath Krishnan Kurup***” AIR 1987 Kerala 13 so as to hold that when there are two conflicting findings in two decrees between the same parties on the same subject-matter, the later decision in point of time must prevail over the first one, and the earlier decision must be regarded as dead. It was further found that the suit was properly valued for the purpose of Court fee and jurisdiction and that plaintiff had locus standi to file the present suit. Suit was further held to be within time. With these findings, suit was decreed and plaintiff was held to be entitled to the possession of the suit property by way of judgment dated 15.06.1987.

7. In the appeal filed by defendant, learned Appellate Court found that issues No.4 & 6 were the only material issues, on which the fate of the case depends. It was noticed that both the parties had earlier instituted two independent suits. Suit No.110 of 1983 titled “Beeru Ram v. Nanju and Others” was brought by the present defendant Beeru Ram, wherein he had pleaded to have become owner of the suit property by way of adverse possession. Necessary issues to that effect were framed and after evidence, the suit was decreed on 19.10.1983 and no appeal against the judgment was filed by the plaintiff of the present case i.e. Niranjan Singh @ Nanju. Learned Appellate Court found further that plaintiff had filed another suit for permanent injunction, which was dismissed on 15.04.1983 and the trial Court had held that defendant had become owner of the suit property by way of adverse

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possession but in the appeal filed by the plaintiff, though the finding regarding the defendant having become adverse possession was reversed but the appeal was dismissed and that this judgment was delivered by the Appellate court on 18.09.1985. Learned Appellate Court found that decision in civil suit No.110 of 1983 decided on 19.10.1983 was prior in time. The issue relating to ownership by adverse possession, between the same parties, regarding the same subject-matter had already been finally decided and therefore, that finding had become *res judicata*. The Appellate Court relied upon **“Lonankutty v. Thomman and another”** AIR 1976 Supreme Court 1645. By holding the judgment dated 19.10.1983 binding upon the rights of the plaintiff, as the same had become *res judicata*, the Appellate Court accepted the appeal of the defendant and dismissed the suit of the plaintiff by way of judgment and decree dated 02.09.1989.

8. It is against the aforesaid judgment of the First Appellate Court that present appeal has been filed.

9.1 Learned counsel for the appellant- plaintiff has contended that Trial Court rightly decreed the suit by holding that it is the later judgment, which will prevail, by relying upon **“Kunhirama Kurup and others v. Mayyarath Krishnan Kurup”** AIR 1987 Kerala 13. Learned counsel has also referred to “Padmanabhan Krishnan v. Mathevan Pillai Kesava Pillai” AIR 1952 (Travancore Chochin) (DB) 294; “Moturi Seshayya and others v. Sri Rajah Venkatadri Appa Row” AIR 1917 (Madras) 950.

9.2 Learned counsel for the appellant also contends that no appeal was filed against the finding of the Appellate Court in judgment dated 18.09.1985

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passed in CA No.261 of 1984, whereby it was held that defendant had not become owner by way of adverse possession.

10. On the other hand, learned counsel for the respondent contends that Appellate Court has rightly upset the finding of the Trial Court and by placing reliance upon *“Lonankutty v. Thomman and another” AIR 1976 Supreme Court 1645*, has rightly come to the conclusion that it is the previous judgment rendered by the complainant Court, which was prevail. Learned counsel further submits that since the suit of the plaintiff for injunction was dismissed on 15.04.1983 filed by the said plaintiff was also dismissed on 18.09.1985, therefore, there was no legal requirement to challenge the finding of the Appellate Court to the effect that defendant was not the owner by adverse possession particularly when a competent authority had already given finding in favour of the defendant vide its judgment 19.10.1983 (Ex.D1) to the effect that defendant had become owner of the suit by way of adverse possession and that judgment had never challenged.

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

12. The sole substantial question of law as involved in the present appeal is as to which of the two conflicting judgments between the same parties on the same issue, both rendered by competent Courts, shall prevail under Section 11 of the Code of Civil Procedure.

13. In *“Ganga Bai v. Vijay Kumar and Others” 1974 AIR (SC) 1126*, Hon’ble Supreme Court has held that under Civil Procedure Code, appeal lies only against decree; or orders passed under Order 43 Rule 1 CPC and that

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against mere finding, appeal cannot lie. Elaborating, Hon'ble Supreme Court held as under:-

“Under Section 96(1) of the Civil Procedure Code, save where otherwise expressly provided by the Code or by any other law for the time being in force, an appeal lies from every decree passed by any Court exercising original jurisdiction, to the Court authorised to hear appeals from the decisions of such Court. Section 100 provides for a second appeal to the High Court from an appellate decree passed by a Court subordinate to the High Court. Section 104(1) provides for appeals against orders of the kind therein mentioned and ordains that save as otherwise expressly provided by the Code or by any law for the time being in force an appeal shall lie "from no other orders." Clause (i) of this section provides for an appeal against "any orders made under Rules from which an appeal is expressly allowed by rules". Order 43, Rule 1 of the Code, which by reasons of Clause (i) of Section 104(1) forms a part of that section, provides for appeals against orders passed under various rules referred to in Clauses (a) to (w) thereof. Finally, Section 105(1) of the Code lays down that save as otherwise expressly provided, no appeal shall lie from any order made by a Court in exercise of its original or appellate jurisdiction.

These provisions show that under the Civil Procedure Code, an appeal lies only as against a decree or as against an order passed under rules from which an appeal is expressly allowed by Order 43, Rule 1. No appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal. It must follow that First Appeal No. 72 of 1959 filed by defendants 2 and 3 was not maintainable as it was directed against a mere finding recorded by the trial Court.”

14. In ***“Gangappa Gurupadappa Gudwag v. Rachawwa & Others”*** AIR 1971 (SC) 442, it has been held by Hon'ble Supreme Court that if final decision in any matter at issue between the same parties is based by a Court on its decision on more than one point, each of which by itself would be sufficient for ultimate decision, the decision on each of these points operates as res

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judicata between the parties.

15. In ***“Banarsi and Ors. v. Ram Phal”*** 2003 AIR (SC) 1989, it has been held that a party in whose favour decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection, though certain findings may be against him.

16. Taking similar view, Hon’ble Supreme Court held in ***“State of Andhra Pradesh v. B. Ranga Reddy”*** 2019 (4) R.C.R. (Civil) 131 that it is not necessary for defendant to file cross-objection against adverse finding on any issue against defendant in a dismissed suit.

17. Adverting to the present case, the suit of plaintiff Niranjana for seeking permanent injunction, in which defendant had set up his plea of adverse possession, was dismissed on 15.04.1983. It is true that while dismissing the suit, the trial Court had upheld the plea of the defendant to have become owner of the suit property by way of adverse possession and the said plea was upset in the Appellate Court but even the Appellate Court dismissed the appeal of the plaintiff Niranjana on 18.09.1985. Thus, ultimately, the suit as well as appeal of the plaintiff Niranjana having been dismissed, it was not required for the defendant Beeru Ram to challenge the finding of the Appellate Court to the effect that he had not become owner of the suit property by way of adverse possession.

18. Ld. Counsel for appellant has referred to ***“Badri Narayan Singh v. Kamdeo Prasad Singh & anr.”*** AIR 1962 (SC) 338, in which an election petition was filed by C alleging A to be guilty of corrupt practices, holding office of profit and declaring C to be duly elected. The Tribunal set aside

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election to A holding him guilty of corrupt practices only but not declaring C as elected. Separate appeals were filed by A & C to the High Court. The High Court dismissed the appeal of A on different ground of holding office of profit and declared C as elected. A filed appeal before Supreme Court against the order passed in appeal by C but not one filed by himself. It was held by Hon'ble Supreme Court that the question as to setting aside of election of A for holding office of profit becoming final finding not been challenged, the principle of res judicata will be operative as to that order.

As will be evident, the two appeals before the High Court had arisen out of the same election petition. Those two appeals were not filed against two separate suits and as such, the facts being distinguishable, the cited authority is not applicable to this case.

19. Proceeding further as noticed earlier that in civil No.110 of 1983 as was filed by defendant Beeru Ram, a decree was specifically passed on 19.10.1983 in favour of said defendant Beeru Ram to have become owner of suit property by way of adverse possession. As noticed by the Appellate Court in that suit, following relevant issues had been framed:

- “1. Whether the plaintiff is owner in possession of the suit property?
OPP
2. Whether plaintiff has become owner of the suit property by adverse possession? OPP”

It is clarified that plaintiff in the abovesaid suit No.110 of 1983 was Beeru Ram i.e. defendant of the present case. That suit was between the same parties regarding the same subject-matter. The suit was decreed on 19.10.1983 and

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concededly, no appeal against that judgment and decree dated 19.10.1983 had been filed.

20. Similar were the facts in “*Lonankutty v. Thomman and another*” *AIR 1976 Supreme Court 1645*, wherein it has been held by Hon’ble Supreme Court as under:

“By [section 11](#), Code of Civil Procedure, in so far as relevant, 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 and has been heard and finally decided. Explanation I to the section provides that the expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto. The only other aspect of the rule of res judicata which on the facts before us must be borne in mind is that it is not enough to constitute a matter res judicata that it was in issue in the former suit. It is further necessary that it must have been in issue directly and substantially. And a matter cannot be said to have been "directly and substantially" in issue in a suit unless it was alleged by one party and denied or admitted, either expressly or by necessary implication, by the other.”

In the aforesaid case before Hon’ble Supreme Court also, two separate suits had been filed in respect of the same subject-matter and the decision of the trial Court was challenged by both the parties before the Appellate Court, which confirmed the finding of the trial Court. One of the parties however appealed against one of the judgment but the other judgment was not appealed against and it thus became final. On these facts, Hon’ble Supreme Court held that decision given by the District Court in the suit, which had become final, was a decision in the former suit within the meaning of Section 11 Explanation 1 and therefore, the High Court was barred by res judicata to hear and decide the same issue.

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21. Thus. the principle of law as laid down in *Lonankutty v. Thomman* by Hon’ble Supreme Court is fully applicable to the facts of the present case.

22. Consequently, it is found that learned Appellate Court did not commit any error in setting aside the judgment and decree of the trial Court and to dismiss the suit.

As such, finding no merit in the present appeal, same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

April 08, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes
Whether Reportable	Yes