

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

121

2024:PHHC:024676

RSA-1121-1994

Date of decision: 22.02.2024

PUSHPA DEVI

..Appellant

Versus

SOM NATH & ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S. Rana, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the Court below while dismissing her suit for grant of decree of declaration with a consequential relief of possession. Both the Courts on the basis of admission made by the plaintiff (appellant) have come to a conclusion that she after having exchanged the land with Sh. Somnath-defendant, has filed the suit, hence, her suit was dismissed.

2. The learned counsel representing the appellant admits that the plaintiff while appearing in evidence has admitted the exchange of land, however, he submits that in a previous suit filed by her, it was held that exchange is not proved.

3. This Court has considered the submissions of the learned counsel representing the appellant.

4. Previously, the appellant filed Civil Suit No.125 of 1986, seeking decree of permanent injunction. In that suit, it was held that the plaintiff is not in possession of the suit land and the possession is with Sh. Somnath pursuant to exchange. Ultimately, her suit was dismissed.

5. The learned counsel representing the appellant submits that the findings arrived at in the previous suit are binding and operates as *res judicata*. This Court is of the considered view that the argument is fallacious particularly when the previous suit resulted in dismissal of the appellant's suit. Defendant No.1 had no right to file appeal. The finding of the Court does not operate as *res judicata* unless the other party has right to file appeal. Ultimately, the previous suit resulted in dismissal. Still further, in issue No.5 of the previous suit, it was held that there was exchange between Sh. Nand Lal, the appellant's husband and Sh. Somnath. In this litigation, the appellant while appearing in evidence as admitted that she was present with her husband when the alleged exchange took place.

6. Hence, no ground to interfere is made out.

7. Dismissed accordingly.

8. All the pending miscellaneous applications, if any, are also disposed of.

February 22nd, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

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