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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7739-2016(O&M)
Date of decision:-21.03.2025

Sewak Ram and another

...Petitioners

Versus

Nanak Chand and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr. Suman Jain, Advocate and
Mr. Man Mohan, Advocate
for the petitioners.

Respondents No.1 and 2 have been proceeded
against ex-parte vide order dated 02.08.2017.

Mr. Keshav Pratap Singh, Advocate and
Mr. Nitin Sansiwal, Advocate
for respondent No.3.

SUVIR SEHGAL, J.(ORAL)

1. Instant revision petition has been filed under Article 227 of the Constitution of India by petitioners/defendants No.3 and 4 assailing order dated 11.07.2016, Annexure P1 passed by learned Civil Judge (Jr. Divn.), Hodal whereby an application filed by them under Order 7 Rule 11 CPC has been dismissed.

2. Counsel for the petitioners submits that respondent No.3/plaintiff filed a suit for recovery of possession on the basis of title



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and inheritance and for declaring the revenue entries as well as sale deed dated 08.04.1985 as null and void. He submits that the plaintiff further sought a relief of permanent injunction restraining defendants No.3 and 4 from alienating the suit property. He asserts that prior to the filing of the suit, at an earlier point of time, plaintiff had filed a suit for declaration to the effect that she is the sole heir of Sohan Lal and upon his death has become the owner and is in possession of the agricultural land. This suit was filed against defendants No.1 and 2 and after contest, the Trial Court by judgment and decree dated 10.11.1983, Annexure P2, dismissed the suit. Counsel asserts that the plaintiff remained unsuccessful in the first appeal, which was dismissed by the learned District Judge, Faridabad by judgment dated 26.09.1984, Annexure P8. It is the stand of the petitioners that the plaintiff suppressed these facts and filed the present suit and an application filed by petitioners/defendants No.3 and 4, who are the subsequent purchasers for rejection of the suit under Order 7 Rule 11 CPC has been wrongly rejected by the Trial Court. It is his argument that the suit is barred by principle of *res judicata*. He has placed reliance upon:

- (i) C.S. Ramaswamy Versus V.K. Senthil and others, 2022 (4) RCR (Civil) 426;**
- (ii) Shekhar Verma Versus Raj Gupta and others, 2019 (2) PLR 178; and**
- (iii) Surinder Mohan (deceased) By LR Versus Baldev Singh and others, 2019 (3) PLR 315.**

3. While supporting the impugned order, counsel for



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respondent No.3 has made a detailed reference to the plaint and has taken a categorical stand that the previous suit was never filed by the plaintiff nor did he challenge the judgment and decree in appeal. Reliance has been placed by him upon **Gurbux Singh Versus Bhooralal, 1964 SCC Online SC 101** and **Srihari Hanumandas Totala Versus Hemant Vithal Kamat and others, (2021) 9 SCC 99** to contend that for deciding an application under Order 7 Rule 11 CPC, only the averments in the plaint are to be considered and plea taken by the defendant in the written statement is irrelevant. Counsel submits that by order dated 20.02.2017, this Court stayed the passing of the final order and upon instructions, he states that evidence of both the parties has been recorded before the Trial Court and the suit is at the final stage.

4. I have heard counsel for the parties and considered their respective submissions besides examining the documents placed on the record with their able assistance.

5. A perusal of the plaint, Annexure P4, of the present suit shows that the plaintiff claims to be owner to the extent of 3/8th share in the suit land, which works out to 1 kanal 4 marlas on the basis of inheritance from her father, who died intestate on 05.12.1945. Plaintiff has averred that when she was four years of age, her mother performed a Karewa marriage and left her in the custody of Smt. Khiliya, her grandmother. It has been pleaded that defendants No.1 and 2 are the sons of sister of plaintiff's father, who breached her trust and succeed in getting a collusive decree dated 11.09.1978 in Civil Suit No.215 of 08.08.1978 from Smt. Khiliya. Plaintiff has alleged that the defendants



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No.1 and 2 did not disclose the birth of plaintiff and played a fraud upon the Court. It is his/her case that on the basis of the decree, the said defendants sold the land vide sale deed dated 08.04.1985 to defendants No.3 and 4 and have deprived the plaintiff of the suit property. Upon coming to know of the fraud, plaintiff filed the suit for recovery of possession and challenged the revenue entries and the sale deed. Reading of the plaint shows that the cause of action accrued to the plaintiff in April, 2014 when Sewak Ram, who was cultivating the land on Batai denied the payment of the rent. In para No.11, plaintiff has specifically pleaded that no other suit has ever been filed or adjudicated or is pending in any Court of law.

6. There is no reference of the previous suit in the plaint, although petitioners/defendants No.3 and 4 claim that it was dismissed and culminated in the passing of the decree, Annexure P3. It is also the stand of the said defendant that the plaintiff challenged this decree by way of an appeal, which was rejected vide judgment, Annexure P8. In her reply, Annexure P7, to the application under Order 7 Rule 11 CPC, plaintiff has specifically denied the filing of the said suit or the appeal. Photocopies of the previous judgments were produced by the said defendants before the Trial Court, but that alone is not sufficient to come to the conclusion that the present suit is barred by the principle of *res judicata*. In order to succeed on the technical plea of a bar under Order 2 Rule 2 CPC or under Section 11, applicant is required to produce in evidence the pleadings in the previous suit to show that the identity of the cause of action in the two suits is the same. Reliance in this regard is



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placed upon the judgment of the Hon'ble Supreme Court in **Gurbux Singh's case** (supra). Mere filing of the photocopies of the previous judgments is not enough. Once evidence is required to be led to establish a fact it means that the suit cannot be thrown out at the threshold on an application under Order 7 Rule 11 CPC.

7. Plea of *res judicata* is primarily an issue which is a mixed question of law and fact. It requires not only the examination of the plaint, but also other evidence and the order passed in the earlier suit. Such a plea can only be decided after the Trial Court has framed issues and the parties have led evidence in support of their respective claims. Holding that the plea of *res judicata* is beyond the scope of Order 7 Rule 11 CPC, Hon'ble Supreme Court in **Shrihari Hanumandas Totala** (supra) has held as under:

“20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11 (d) can be summarized as follows:

- (i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;*
- (ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;*
- (iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or*



parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a Court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused."

8. In view of the clear enunciation of law by the Hon'ble Supreme Court, this Court is of the view that there is no error in the order passed by the Trial Court. The judgments relied upon by counsel for the petitioners are not applicable. In C.S. Ramasyamy's case (supra), Hon'ble Supreme Court held that the suit challenging the registered sale deeds had been filed after 10 years of registration and by clever drafting, the plaintiffs had tried to bring the suit within limitation, which was otherwise barred. In Shekhar Verma's case (supra), a co-ordinate Bench of this Court was dealing with a case where a second suit had been filed after the dismissal of the first suit and it was found to be barred under Order 9 Rule 9 CPC. The judgment in Surinder Mohan's case (supra) would not apply as the Court found that on a plain reading of the text of the plaint, it was clear that the suit is barred by *res judicata*. This is not the situation in the present case. Plea of *res judicata* has to be established after framing an issue and leading evidence. No interference is called for in the order passed by the Trial Court as it does not suffer from any illegality or perversity.



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9. Finding no merit in the revision petition, it is dismissed, though with no order as to costs.

10. At this stage, Court has been informed that during the pendency of the instant revision petition, the Trial Court has framed issues and both the parties have led their evidence, but suit has not been decided in deference to an interim order passed in the instant petition. Although issues framed by the Trial Court have not been produced before this Court, but the Court has been apprised that a specific issue has been framed as to whether the suit is barred by the principle of *res judicata*. In case such an issue has not been framed, liberty is granted to the petitioners to move an appropriate application for framing of an additional issue regarding *res judicata*. In case such an application is moved by the petitioners, Trial Court shall decide it, permit the parties to lead additional evidence, if required and conclude the trial as expeditiously as possible preferably within a period of four months from the date of communication of a copy of this order.

11. Pending miscellaneous application, if any, shall stand disposed off.

(SUVIR SEHGAL)
JUDGE

21.03.2005

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No