2025:PHHC:000150

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

**RSA-1872-2014 (O&M)**
**Reserved on: 17.12.2024**
**Pronounced on: 07.01.2025**

**MANGAT RAM AND OTHERS**

. . . .APPELLANTS

Vs.

BARKHA RAM AND OTHERS

. . . . RESPONDENTS

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**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

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Argued By:- Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Shray Sachdeva, Advocate
for the appellants.

Mr. Madhur Panwar Advocate for
Mr. Aman Pal, Advocate
for Respondents N: 1 to 5; and 7 to 11.

**DEEPAK GUPTA, J.**

Defendants of the case are before this Court in the present Regular Second Appeal against the concurrent findings of the Courts below, in as much as Civil suit No.476 of 2005/2009 filed by plaintiffs Barkha Ram etc. *(respondents herein)* for declaration and possession of the suit land was decreed by the trial Court of learned Civil Judge (junior Division), Kurukshetra on 28.03.2011. Civil Appeal No.337 of 2013 filed by the defendants *(appellants herein)* was dismissed by the Court of learned Additional District Judge, Kurukshetra on 03.03.2014.

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

3.1 Subject-matter of the dispute is 32 Kanal 08 Marla of land situated in Revenue Estate of Village Yara, Tehsil Shahabad, District Kurukshetra detailed in para No.1 of the plaint (hereinafter referred as the 'suit land').

3.2 According to plaintiffs, they along with other co-sharers are owners of the suit land as per the entries in the revenue record. Defendants have no concern with the suit land but names of defendant Nos.1 to 4; and predecessor-in-interest of defendant Nos.5 to 10 i.e. Puran *(since deceased)* are being wrongly reflected in para No.4 of the Jamabandi as Kabjan, whereas these defendants are actually not the owner of the suit land. It is plaintiffs, who are exclusive owner being co-sharers in the suit land. The name of defendant No.11 is recorded in the revenue record to be in cultivating possession of the suit land.

3.3 Plaintiffs have challenged the entries in the revenue record showing the name of defendant Nos.1 to 10 as *Kabjan* of the suit land to be illegal and void by submitting that these defendants were never inducted nor handed over the possession of the suit property by the plaintiffs. It is contended that as per the legal position, the person in possession is shown in column No.5 of the Jamabandi and therefore, the names of defendant Nos.1 to 10 as *Kabjan* in column No.4 of the Jamabandi are absolutely wrong. Plaintiffs never inducted defendant No.11 as their tenant on the suit land nor defendant No.11 ever paid any Rent, *Batai or Chakota* to the plaintiffs and therefore, the entry of defendant No.11 to be in possession of suit property as *Gair Morusi* is also illegal and void.

3.4 Asserting that entries in revenue record are wrong and that plaintiffs are the actual owner of the suit land, they brought the suit seeking decree of declaration to the effect that entries in Jamabandi showing defendant Nos.1 to 10 as *Kabjan* of the suit property are null, illegal void and not binding on the rights of the plaintiffs and so deserve to be deleted. Plaintiffs also seek declaration that the defendants are trespassers over the suit property and as such, decree for possession of the suit land is also prayed for by directing the defendants to hand over the vacant possession of the suit property to the plaintiffs.

4.1 In written statement filed by defendant Nos.1 to 10 *(appellants herein)*, they raised various preliminary objections, the material being that

suit is barred by limitation, inasmuch as suit for declaration can be filed within three years but plaintiffs have changed the entries of the revenue record after more than 100 years and as such, the suit is barred by limitation.

4.2 These defendants further pleaded that plaintiffs were required to pay ad valorem Court fee to claim any right, title or possession over the suit property, inasmuch as defendant Nos.1 to 10 had sold the land measuring 30 Kanal 5 Marla for consideration of ₹20,25,000/- vide sale deed dated 01.05.2006 to defendant Nos.11 (i to v), regarding which mutation No.4185 was entered. Another part of suit land measuring 2 Kanal 3 Marla was sold for consideration for ₹1,53,000/- vide sale deed dated 27.06.2005, regarding which mutation No.4207 was sanctioned in favour of defendant No.11 (through his legal heirs). Defendants claimed that plaintiffs are required to pay the ad valorem Court fee on ₹21,78,000/-.

4.3 (a) Another strong preliminary objection raised by the defendants is regarding the suit being barred by res judicata and constructive res judicata. It was claimed that mutation No.139 dated 15.05.1896 was challenged by Pirthi Singh, the father of plaintiff No.1; and Ram Kishan, the father of plaintiff Nos.2 to 5 by way of civil suit No.14 of 72 dated 06.01.1972 in the Civil Court at Karnal, which suit was dismissed on 01.02.1973.

4.3 (b) Further, Ram Singh, the brother of plaintiff No.1 had filed suit No. 392 of 1994 on 05.02.1986 in the Court of learned Civil Judge, Kurukshetra regarding the suit land, which was dismissed by the Court on 30.11.1995. Even the civil appeal No.24 of 1997 filed against the aforesaid judgment was dismissed by the Appellate Court on 16.07.1999.

4.3 (c) It is alleged that despite being in the knowledge of the above previous litigations, plaintiffs concealed these facts from this Court. Defendants claimed that they are entitled for special cost from the plaintiffs in this regard.

4.4 Defendants pleaded further that defendant No.11 Babu Ram was held as a tenant under defendant Nos.1 to 10 on the suit land by the Court in the judgment dated 30.11.1995 and defendant Nos.1 to 10 were held to be true owner of the suit property. Due to pendency of the above referred suit, the sale deed could not be executed in favour of defendant No.11. As such, defendant No.11 had filed civil suit No.428 of 1999, which was decided in Lok Adalat by the Court on 11.03.2006. This fact was very much in the knowledge of the plaintiffs. In compliance of the judgment dated 11.03.2006, defendant Nos.1 to 10 have executed the sale deed in favour of defendant No.11 (i to v), which sale deed is legal, valid and binding on the rights of the plaintiffs. All this litigation was in the knowledge of the plaintiffs but still they concealed these facts from the Court. As such, they are estopped by their own act and conduct to bring the present suit.

4.5 Defendants further pleaded that mutation No.139 dated 15.05.1896 would reveal that Masania etc. had admitted having sold the land to Mangal Singh etc. for a sum of ₹250/-, which was obtained by them for spending in some litigation. Mutation was entered to the effect that vendees were in possession of the suit land and since the owners had admitted having sold the same, so the Patwari presented the mutation before the Assistant Collector for attestation. Before the Assistant Collector, the vendors denied the transaction but said Assistant Collector recorded the fact that vendees are in possession, when the land was given and that they are in possession since long time. Thereafter, an entry was made to the effect that real owners are *Gair Kabij* (without possession), while the vendees are in possession (*Kabij*) over the suit land. This mutation was sanctioned way back on 15.05.1896. All the subsequent revenue entries are based upon this mutation, according to which plaintiffs' father and other co-sharers are shown to be owners without possession, whereas contesting defendants Nos.1 to 10 are shown to be owner in possession over the suit land.

4.6 Defendants also referred to Rule 7.25 (4) of Punjab Land

Record Manual to claim that a right holder should not be entered as *Gair Kabij*, if he himself is in legal or constructive possession, as when he has put someone in possession on his behalf or the land is lying waste. In the present case, as the owners Masania etc. admitted before the revenue officer that they are not in possession, therefore, they were shown as *Gair Kabij* and as such, the entries in the mutation and in the subsequent revenue record cannot be stated to be against the violation of rules.

4.7 With the above stand and controverting all other averments of the plaintiff, defendants prayed for dismissal of the suit.

4.8 The legal heirs/representatives of defendant No.11 adopted the same written statement as filed by defendant Nos.1 to 10, as per the statement made by their counsel.

5.1 Evidence produced by both the parties was taken on record.

5.2 The trial Court found that as per mutation N: 139 dated 15.05.1896 Ex.D-16/T, the entry in favour of defendant Nos.1 to 10 had been recorded on the basis of an agreement to sell dated 10.02.1890. However, no such agreement to sell dated 10.02.1890 had been placed on record. It was further observed that no registered sale deed was executed on the basis of said agreement nor any court decree was passed and as such, the entry in mutation Ex.D-16/T was not on the basis of registered document and therefore, it did not confer any title. Trial court further observed that Jamabandi Ex.P-1 reflected the names of the plaintiffs as co-owners with others in the suit property. Based upon these entries, trial Court concluded that defendant Nos.1 to 10 were trespassers over the suit land, whereas the plaintiffs were the owners thereof.

5.3 Trial Court also held that as the suit was based upon title, therefore it was not barred by limitation. On the point of res judicata, trial Court noticed that the suit of 1972 had been dismissed as withdrawn with liberty to file fresh suit; whereas, the subsequent suit was only for a decree of permanent injunction and since the issue involved in that case was

different from the issues framed in the present suit, therefore, that litigation did not make the present suit as barred by res judicata.

5.4 Trial Court also held that the suit was not bad for non-payment of the ad valorem Court fee, inasmuch as the sale deeds in favour of defendant Nos.11 (i to v) had been executed during the pendency of the suit.

5.5 With the above findings, the trial Court vide judgment dated 28.03.2011 decreed the suit.

5.6 The appeal filed by the contesting defendants has been dismissed by the first Appellate Court of learned Additional District Judge, Kurukshetra vide judgment dated 03.03.2014 by upholding the findings of learned trial Court on all the issues.

6.1 Assailing the aforesaid concurrent findings, it is contended by learned senior counsel for the appellants-defendants that both the Courts have failed to appreciate the factual as well as legal position in right perspective.

6.2 It is contended by learned senior counsel that it is no doubt true that initial possession of the defendants over the suit land was by virtue of an agreement to sell of 1890 for an amount of ₹250/- and no sale deed pursuant to that agreement to sell was produced but defendants continued to remain in possession pursuant to that agreement to sell. The plaintiffs, who are recorded to be co-owner of the suit property, never took any step to take possession of the suit property.

6.3 Learned counsel for the appellants has put main emphasis on the admission of the plaintiffs made in the previous litigation of 1972, in which they specifically pleaded the defendants to be trespassers over the suit land. Learned counsel contends that in view of the said clear admission of the plaintiffs that defendants were trespassers over the suit land, it is evident that possession of the defendants over the suit land was at least

adverse to that of the true owner i.e. the plaintiffs, who are recorded as such in the revenue record. The said possession of defendants as trespassers over the suit land even if assumed since the year 1972, has ripened into the ownership by the adverse possession, as no suit for possession was later on filed by the plaintiffs.

6.4 Learned senior counsel for the appellants-defendants contends further that in the second round of litigation filed in 1995 by another co-sharers/ brother of the plaintiff N: 1, a specific issue was framed as to whether the present defendants have become owner of the suit property by way of adverse possession. That issue was decided in favour of the defendants by holding that they had become owner of suit property by way of adverse possession. Learned counsel contends that that finding in the previous litigation, even if rendered in a suit for permanent injunction, is binding upon the plaintiffs, as the suit filed by the co-sharer having been dismissed, the finding thereof is binding upon the other co-sharers/plaintiffs as well. Learned counsel contends that present suit is liable to be dismissed on the main ground of res judicata but both the Courts below failed to appreciate the legal position in this regard.

6.5 With all the above submissions, prayer is made for acceptance of this appeal by setting aside judgments of the Courts below and to dismiss the suit of the plaintiffs - respondents.

7. Refuting the aforesaid contentions, learned counsel for the respondents-plaintiffs has defended the judgments of the Courts below. The main contention of learned counsel is that the High Court cannot substitute its views so as to upset the concurrent findings of facts as recorded by the Courts below. It is contended that since both the Courts below, on the basis of evidence on record, have held the plaintiffs to be owner of the suit land and have found the defendants to be trespassers over the suit land, therefore, suit for possession and declaration has been rightly decreed by the Courts below. With these submissions, he prayed for dismissal of the appeal.

8. This Court has considered submissions of both the sides and has carefully gone through the trial Court record with the assistance provided by counsel for both the sides.

9. Earliest revenue entry on record is mutation No.139 of 1895-96 Ex.D16/T, which would reveal that entries of ownership were in the name of Bahadra & Pehlada sons of Gulzari to the extent of ½ share; and Masania, Bholu & Sunder sons of Sahaba to the extent of remaining ½ share. These entries regarding title were changed in the name of Pehlada son of Gulzari to the extent of ¼ share; Masania, Bholu & Nathu son of Sahaba to the extent of ¼ share; Mangal Singh son of Sher Singh to the extent of ¼ share; and Sunder Singh & Shankar Singh sons of Maan Singh to the extent of remaining ¼ share. These entries were made in the mutation on the basis of an agreement to sell dated 10.02.1890 for an amount of ₹250/-.

10. The above entries have been carried forward in the next jamabandi for the year 1898-99 (Ex.D17/T) revealing Pehlada son of Gulzari to be owner to the extent of ¼ share, Masania, Bholu & Nathu sons of Sahaba to be owner to the extent of ¼ share but they are recorded as owner without any possession. On the other hand, Mangal Singh son of Sher Singh to the extent of ¼ share, and Sunder Singh & Shankar Singh sons of Maan Singh are recorded to be co-owner to the extent of remaining ¼ share and they are recorded to be in possession of the suit land.

11. As was observed in the earlier judgment dated 30.11.1995 (Ex.D2), it is in mutation number 139 dated 15.05.1896 that entry was made by the Patwari with the remarks that Masania etc. had admitted having sold the land to Mangal Singh etc. for a sum of ₹250/-, which was obtained by them for spending in some litigation. The Patwari also entered in the mutation that vendees were in possession over the land and since the owners had admitted having sold the same, so the mutation was presented before the Assistant Collector for attestation. Thereafter, the mutation was produced before the Assistant Collector, before whom the vendors denied the sale but the Assistant Collector recorded the facts that vendees are in

possession, whom the land was given and that they are in possession since long. Thereafter, the entry was made to the effect that real owners are *gair kabiz* i.e. without possession; while, vendees are in possession (*kabiz*) over the land. This mutation was sanctioned on 15.05.1896. All the subsequent revenue entries are based upon this mutation, according to which forefathers of the present plaintiffs are recorded to be co-owners of the suit land but without possession; whereas, forefathers of the defendants are recorded to be owners in possession to the suit land. It is also important to notice that as per mutation Ex.D16, the vendees were already recorded to be in possession along with the real owners and after this mutation was attested by the Assistant Collector, the vendees were shown to be in exclusive possession as *Kabiz,* while the owners were shown as *Gair Kabiz* i.e. without possession.

12. The possession of the defendants/their forefathers over the suit land has been continuing ever since prior to 1890. However, the trial Court very easily, disbelieved their case by stating that plaintiffs being the true owners are entitled to possession, without even adverting to the pleas raised by the defendants to the effect that they had perfected their title by way of adverse possession. Ld. trial Court was not even bothered to go in depth to consider the consequences of the two previous round of litigation.

13. It is true that neither agreement to sell dated 10.02.1890, as referred in the mutation No.139 of 1895-96, has been placed on record nor there is anything to show as to whether any sale deed was executed in pursuance thereto and as to whether any suit for specific performance was filed pursuant to that agreement to sell but fact remains that the vendees Mangal etc. i.e. predecessor-in-interest of defendants No.1 to 10 remained in possession over the suit land ever since 1890. Their possession may be permissive in the beginning, when the agreement to sell was executed but once, it is found that there is no evidence that any sale deed was executed or any suit for specific performance was filed pursuant to the agreement to sell, obviously their possession became adverse with the passage of time.

14. There is nothing on file to show that prior to 1972, owners of the suit land ever took any step to take possession of the suit land from the predecessor-in-interest of the defendants. It is again no doubt true that since the agreement to sell was for an amount of ₹250/- i.e. an amount of more than ₹100/-, therefore, no transfer of title could have taken place without a registered instrument but this is also the settled proposition of law that if vendees are in possession of the suit land pursuant to an instrument, which is null and void, then their possession is to be deemed as adverse.

19. Reliance in this regard can be placed upon ***Utha Moidu Haji Vs. Kuningarath Kunhabdulla (SC) 2006(14) Scale 156,*** wherein it has been held by Hon'ble Supreme Court that when a person enters into possession of land under void or voidable transaction, his possession becomes adverse from the date, he comes into possession and that starting point of limitation of the adverse possession is, when he enters into possession under such a void or voidable transaction.

20. In the above case before Hon'ble Supreme Court, defendants No.2 to 8 sold land in dispute vide registered sale deed dated 30.08.1963 not only on their behalf but also on behalf of the minor child (plaintiff), in favour of X. Plaintiff attained majority on 30.07.1974 and filed the suit for setting aside the sale deed on 18.03.1981. Hon'ble Supreme Court held that plaintiff would be deemed to have knowledge about the execution of the sale deed on his attaining majority, as soon as he pleaded and proved that his case comes within the purview of the exception contained in the provisions of Limitation Act. The period of limitation would be either three years from the date of attaining majority by the plaintiff or 12 years from the date of execution of sale deed. As plaintiff had filed the suit after sleeping for six years over his right to sue, the suit was held to be barred by Article 60 (a) of the Limitation Act.

21. In the present case, it is important to notice that in 1972, Pirthi Singh son of Inder, Sahota & Phula sons of Sardha and Ram Krishan, son of

Smt. Shanti, widow of Punjaba brought a suit (CS N: 14/1972) seeking decree for possession of the suit land against present defendants. That suit was brought with the similar pleas to the effect that entries in the revenue record showing the defendants to be in possession were wrong and illegal and did not deprive the plaintiffs of their legal and legitimate right over the suit land. Defendants No.1 to 10 of the present case, were the defendants of 1 to 9/ their predecessors in the previous suit. In para No.9 of the plaint *(Ex.D22)* of that previous suit of 1972, it was specifically pleaded that defendants No.1 to 9 are trespassers and that they are not entitled to remain in possession of the suit land, as they have no right of any kind vested in them and they are liable to be dispossessed. However, the said civil suit filed by various co-owners including Pirthi Singh, the father of present plaintiff No.1; and Ram Kishan (plaintiff N: 6) and the father of plaintiffs No.2 to 5 was dismissed as withdrawn on 01.02.1973 vide order Ex.D1 with permission to file fresh suit on the same cause of action.

22. Even if for the sake of arguments, it is assumed that possession of the defendants/their predecessors in interest remained permissive prior to 1972, at least when the suit was filed by predecessor-in-interest of the present plaintiffs in 1972, it was their clear admission that defendants were in possession of the suit land as trespassers and therefore, they had sought the possession on the basis of their title but that suit was dismissed as withdrawn with liberty to file the fresh suit on the same cause of action. No fresh suit for possession was brought by them. This is true that suit of 1972 was not decided on merits and cannot operate as *res judicata* but at the same time, court cannot ignore the admission made by the predecessor-in-interest of the plaintiffs to the effect that defendants/their predecessors were in possession of the suit land as predecessors. As such, plaintiffs are now estopped from denying the possession of the defendants over the suit land to be adverse.

23. Still further, second round of litigation started in the year 1986, when Ram Singh son of Pirthi Singh i.e. brother of plaintiff No.1-Barkha

Ram, also recorded to be co-sharer in the suit land, brought this suit seeking decree for permanent injunction bearing Civil Suit No.392 of 94 titled 'Ram Singh Vs. Puran Chand & Others'. Ex.D2 is the copy of the judgment dated 30.11.1995 passed in that suit, which would reveal that same pleas were taken by plaintiff of that case i.e., Ram Singh as in the present case. It was pleaded by him that he along with Satpal, Barkha Ram (present plaintiff), Pirthi Singh, Surta, Phula, Charta, Mam Raj, Ram Rattan, Ram Kishan (plaintiff N: 6 of present case & father of plaintiffs No.2 to 5) etc. were co-owners in the suit land and that entries in jamabandi in favour of the defendants showing them to be in possession in the column of ownership were against law and against procedure, which casted a cloud on the title of the plaintiffs. They also challenged the entry of mutation No.139 dated 15.05.1896 to be illegal, void and not binding upon their rights. It was claimed that defendants or their predecessors had never been in possession of the land nor had cultivated the same and that entries were incorporated in collusion with the revenue officials. Defendants contested the suit and also referred about the previous litigation of 1972, which was dismissed as withdrawn. It was specifically pleaded that in the previous litigation, it was admitted by the plaintiffs that defendants were in possession of the suit land as trespassers. The prayer made by the plaintiffs seeking decree of injunction to restrain the defendants from alienating the suit property, was opposed by the defendants of that case.

24. It is important to notice the material issues framed in that suit of 1986. The material issues No.1, 2, 2(a) and 10 are as under: -

1. "Whether the plaintiff is co-owner in possession of the suit land as alleged? OPP

2. Whether entries in the revenue record in favour of the defendants are false and fabricate as alleged? OPP

2A. Whether the mutation No.139 of 15.05.1896 is illegal and void as alleged? OPP

10. Whether the defendants had become owner of the suit land by way of adverse possession? OPD"

25. Based upon the evidence on record, the trial Court vide judgment dated 30.11.1995 specifically held under issue No.1 that plaintiff was neither the owner nor in possession of the suit land. Issues No.2 and 2A were decided together and it was specifically held that entries of mutation No.139 of 15.05.1896 and the subsequent revenue record were not illegal or in violation of law. As such, these issues were also decided against the plaintiff. Under Issue No.10, it was specifically held that defendants had become owner of the suit land by way of adverse possession. Consequent to the findings on these material issues, the suit filed by Ram Singh, one of the co-shares in the suit land was dismissed by the Court vide judgment dated 30.11.1995. Plaintiff of that case filed Civil Appeal No.24 of 1997 against the aforesaid judgment but the same was dismissed in default vide order dated 16.07.1999 (Ex.D4).

26. The question is as to whether the aforesaid judgment of 1995, which was rendered in a suit for permanent injunction, filed by Ram Singh, one of the co-sharers and brother of one of the plaintiffs Barkha Ram, amounts to res judicata or not?

27. It is the contention of ld. counsel for the respondents that a finding returned in the suit for permanent injunction does not amount to *res judicata*. Another contention raised by him is that present plaintiffs were not party to the previous litigation and as such, the judgment does not amount to *res judicata*. This reasoning has also been accepted by the trial Court and affirmed by the Appellate Court. However, I am afraid that the view taken by the Courts below in this regard is absolutely wrong and illegal. Let us notice the legal position in this regard.

28. In ***Ramachandra Dagdu Sonavane vs. Vithu Hira Mahar, AIR 2010 SC 818 : (2009) 10 SCC 273,*** explaining the scope of doctrine of Res-Judicata, it has been observed by Hon'ble Supreme Court as under:

"42. **Res-judicata and Code of Civil Procedure** :- It is well known that the doctrine of res- judicata is codified in Section 11 of the Code of Civil Procedure. Section 11 generally comes into play in relation to civil suits. But apart from the codified law, the doctrine of res-judicata or the principle of the res-judicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive res-judicata is engrafted in Explanation IV of Section 11 of the Code of Civil Procedure and in many other situations also Principles not only of direct res-judicata but of constructive res-judicata are also applied, if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res-judicata and bars the trial of an identical issue in a subsequent proceedings between the same parties.

43. The Principle of res- judicata comes into play when by judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implications even then the Principle of res- judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it, is deemed to have been constructively in issue and, therefore, is taken as decided *[See Workmen vs. Cochin Port Trust, AIR 1978 SC 1283].*

44. In ***Swamy Atmandanda vs. Sri Ramakrishna, Tapovanam [(2005) 10 SCC 51],*** it was held by this court :

> "26. The object and purport of the 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 a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment."

45. When the material issue has been tried and determined between the same parties in a proper suit by a competent court as to the status of one of them in relation to the other, it cannot be again tried in another suit between them as laid down in ***Krishna Behari Roy vs. Bunwari Lal Roy reported in [1875 ILR (IC-144)],*** which is followed by this Court in the case of ***Ishwar Dutt Vs. Land Acquisition Collector & Anr. [(2005) 7 SCC 190],*** wherein the doctrine of `cause of action estoppel' and `issue estoppel' has been discussed. It is laid down by this Court, that if there is an issue between the parties that is decided, the same would operate as a res-judicata between the same parties in the subsequent proceedings. This court in the case of ***Isher Singh vs. Sarwan Singh, [AIR 1965 SC 948]*** has observed :

> "11. We thus reach the position that in the former suit the heirship of the respondents to Jati deceased (a) was in terms raised by the pleadings, (b) that an issue was framed in regard to it by the trial Judge, (c) that evidence was led by the parties on that point directed towards this issue, (d) a finding was recorded on it by the appellate court, and (e) that on the proper construction of the pleadings it would have been necessary to decide the issue in order to properly and completely decide all the points arising in the case to grant relief to the plaintiff. We thus find that every one of the conditions necessary to satisfy the test as to the applicability of Section 11 of the Civil Procedure Code is satisfied."

46. So far as the **finding drawn in the suit for injunction** in O.S. No.104 of 1953, regarding adoption would also operate as a res-judicata in view of the judgment of this Court in the case of ***Sulochana Amma Vs. Narayanan Nair [(1994) 2 SCC 14]***. It is observed:

> "The decision in earlier case on the issue between the same parties or persons under whom they claim title or litigating under the same title, it operates as a res-judicata. **A plea decided even in a suit for injunction touching title between the same parties, would operate as res-judicata**.

> **It is a settled law that in a suit for injunction when title is in issue, for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties when the same is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit, the decree in injunction suit equally operates as a res-judicata."**

47. The same view is reiterated in the case of ***Gram Panchayat of Village Naulakha Vs. Ujagar Singh & Ors. [AIR 2000 SC 3272].*** This Court has stated, that, **even in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in the later suit or proceedings, where title is directly in question, unless it is established, that it was "necessary" in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was found or based on the bindings of title.** Even the mere framing of an issue may not be sufficient as pointed out in that case.

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50. In a suit for injunction, the issues and the decision would be confined to possessory aspect. **If the right to possession of property cannot be decided without deciding the title to the property and a person who approaches the Court, his status itself is to be adjudicated then without declaring his status, the relief could not be granted**. In earlier suit Vithu claimed his right as an adopted son. Therefore, since he did not prove the adoption, there was no subsisting right or interest over the immovable property and as such the issue on adoption was a relevant issue in 1953 suit and, therefore, the said issue which has been decided in earlier suit and which has been confirmed in the regular second appeal and the issue decided therein was whether he was an adopted heir of Watandar was binding on the parties. The similar question has to be decided by the S.D.O. to decide the claim, right or interest in respect of the hereditary office. Therefore, the issue was raised and it was decided and it is binding on the parties."

29. It is, thus, clear from the legal position as above that it is settled law that in a suit for injunction, when title is in issue, for the purpose

of granting injunction, the issue directly and substantially arises in that suit between the parties, when the same is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit, the decree in injunction suit equally operates as a res-judicata.

30. In the present case also, Ram Singh, plaintiff of the previous suit, had sought decree for injunction on the basis that entries in the name of defendants showing them to be in possession were wrong and that they should be restrained from alienating the suit property. The decree of injunction could not have been granted, unless the plea taken by him regarding the entries in the revenue record was examined by the Court and similarly, the Court was also required to examine as to whether the defendants had perfected their title by way of adverse possession, as was contended by them. These findings were returned and only thereafter, the suit for injunction was dismissed.

31. In view of the legal position discussed above, the above findings, even if rendered in a suit for injunction, amounts to *res judicata*.

32. As far as the plea that plaintiffs are not parties to the suit filed by Ram Singh is concerned, it is also without any merit because the suit in 1986 was filed by one of the co-sharers, who is the real brother of plaintiff No.1. Besides, it has already been noticed that predecessor-in-interest of the present plaintiffs and one of the present plaintiffs had filed a suit in 1972 seeking possession of the suit land, in which they had specifically claimed the defendants to be in possession of the suit land as trespassers. Thus, on both the counts, it cannot be said that defendants had not the perfected their title over the suit land, as the possession of the defendants being in the capacity of the trespassers being as adverse, was to be in the knowledge of the real owners.

33. Apart from the above, trial Court also went in error in holding the suit to be within limitation on the ground that suit was filed on the basis of title and therefore, no period of limitation was prescribed. Since it was

the specific stand of the defendants that they had perfected their title by adverse possession, as was held in the previous litigation, the issue was governed under Article 65 of the Limitation Act. Suit in such a case can be filed within a period of 12 years. The legal position in this regard is explained in ***Sopanrao vs. Syed Mehmood (2019) 7 SCC 76***, wherein it was held as below:-

> "9…….The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Reliance placed by the learned counsel for the appellants on the judgment of this Court in ***L.C. Hanumanthappa v. H.B. Shivakumar (2016) 1 SCC 332*** is wholly misplaced. That judgment has no applicability since that case was admittedly only a suit for declaration and not a suit for both declaration and possession. In a suit filed for possession based on title, the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff."

34. In the present case, suit for possession was earlier filed in 1972, wherein possession of defendants as trespassers over the suit land was admitted by the predecessors of the plaintiffs. Suit was dismissed as withdrawn with permission to file fresh suit on same cause of action. No such suit with same cause of action was filed. Rather, second suit was filed by another co-sharer in the suit land/ brother of one of the plaintiffs of present suit in 1986 seeking decree for injunction, which suit was dismissed in 1995 and appeal dismissed in 1999. Present suit has been filed in 2005 i.e., much beyond the period of 12 years from the date of admission of plaintiffs regarding possession of defendants being that of trespassers over

the suit land made in 1972. As such, present suit is clearly barred by limitation.

35. The last contention raised by learned counsel for the respondents is that the High Court cannot intervene in the concurrent findings of the facts as recorded by the Courts below. It has also no merit.

36. In ***Lakhpat Rai & another vs. J.D Gupta & Others***, RSA 4958 -2012 decided on 14.10.2024, this court after referring to catena of authorities on this issue, held as under:

> "60. To conclude, legal principles, which can be culled out are that though High Court is not to interfere with the concurrent findings of the Courts below but it is not an absolute rule. There are some exceptions for interference by the High Court, when it is found that:
>
> - When finding of fact by the Courts below is vitiated by non consideration of material evidence or erroneous approach.
> - The Courts have drawn wrong inferences from the proved facts by applying the law erroneously.
> - The Courts have wrongly cast the burden of proof.
> - When decision is based upon no evidence, which would mean that not only there is total dearth of evidence but also, where is the evidence taken as a whole, is not reasonably capable of supporting the finding.
> - When the judgment of the final Court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence.

37. In the light of above exceptions, when the evidence on record in the present case is analysed, it is found that courts below have drawn wrong inferences from the proved facts by applying the law erroneously. The judgment of trial court and also of the first appellate court as final Court of fact, is based on misinterpretation of legal position and so, those findings

cannot be sustained.

38. As such, the contention of Ld. Counsel for contesting respondents to the effect that there is no reason to interfere in concurrent finds of facts of courts below, is found to be devoid of any merit and, so the same is rejected.

39. On account of the entire discussion as above, it is held that the judgments passed by the Courts below cannot be sustained in the eyes of law. These judgments are hereby set aside. The suit filed by the plaintiffs-respondents is hereby dismissed, as it is the appellants-defendants, who had become owners of the suit land by way of adverse possession, as had been held in the earlier suit decided in 1995 and which finding is binding on the present plaintiffs. Suit is also found to be barred by limitation.

Appeal is allowed accordingly.

**07.01.2025** **(DEEPAK GUPTA)**
*Vivek* **JUDGE**

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