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

**RSA-4887-2015 (O&M)
Reserved on: 11.08.2025
Pronounced on: 18.08.2025**

Raj Kumar and Others

.....Appellants

VERSUS

Sunita and Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Santosh Kumar Tripathi, Advocate
for the appellants.

Mr. Sukhandeep Singh, Advocate for
Mr. Lokesh Sinhal, Advocate
for respondent No.1.

Mr. Vaibhav Sharma, AAG, Haryana.

MANDEEP PANNU, J

1. The present Regular Second Appeal has been filed by the appellants/defendants challenging:

(i) The judgment and decree dated 30.03.2013 passed by the learned Civil Judge (Junior Division), Faridabad, decreeing the suit of the plaintiffs/respondents; and

(ii) The judgment and decree dated 14.05.2015 passed by the learned Additional District Judge, Faridabad, dismissing the appeal and upholding the trial court's decree.

Brief Facts

2. The plaintiffs/respondents filed the suit with the averments that Bhajan Lal, son of Shiv Charan, was the owner of the suit land described in the headnote. He had two sons, namely Vinod Kumar (since deceased) and Raj Kumar

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(defendant no. 1), and two daughters, namely Sunita and Kavita (plaintiffs). Upon the death of Vinod Kumar, his estate devolved upon his widow (defendant no. 2) and daughter (defendant no. 3). Bhajan Lal died intestate on 04.02.1998 at Village Deeghot, while his last rites were performed at Village Machhgar. The property was inherited in equal shares by the plaintiffs, defendant no. 1, and Vinod Kumar. It was alleged that defendant no. 1, in conspiracy with the local Patwari, managed to get Mutation No. 2323 dated 27.04.1998 sanctioned in his favour and in favour of Vinod Kumar on the basis of an alleged Will purportedly executed by Bhajan Lal in favour of his sons. The plaintiffs came to know of the mutation only on 06.09.2007. Meanwhile, the suit land had been acquired by the State for establishing and developing the Industrial Mini Town, Faridabad. They moved an application dated 20.07.2008 before the Land Acquisition Collector, Faridabad seeking restraint on disbursement of compensation. Despite this, the amount was disbursed. Believing that the suit was no longer maintainable after the disbursement, they initially withdrew earlier proceedings but subsequently filed the present suit seeking declaration and permanent injunction.

The defendants contested the suit, asserting the genuineness of the Will, claiming the plaintiffs were married, settled in their matrimonial homes, and had been given sufficient dowry. They also took preliminary objections regarding jurisdiction under the Land Acquisition Act, limitation, and non-joinder of necessary parties.

3. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

- 1) Whether the plaintiff is entitled to decree of declaration and decree of permanent injunction as prayed for? OPP

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- 2) Whether the plaintiffs are entitled to receive the compensation of the acquired land as prayed for? OPP
 - 3) Whether the plaintiff is entitled to decree of mandatory injunction as prayed for? OPP
 - 4) Whether the suit of the plaintiff is not maintainable in the present form? OPD
 - 5) Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD
 - 6) Whether the plaintiff has concealed the true and material facts from the Court? OPD
 - 7) Relief.
4. Both the parties lead their evidence.

Findings Of The Lower Courts :-

5. Learned trial Court decreed the suit of the plaintiff vide judgment and decree dated 30.03.2013 by observing that the Will is not proved on the record. It is further observed by the learned trial Court that as per Order 23 CPC, the plaintiff is not precluded from bringing a fresh suit if the earlier suit was withdrawn for some formal defect. The earlier Suit No. 725 was withdrawn by the plaintiff as defendants No. 4 and 5 were not parties to that suit. Thus, the said suit was having formal defect of non-joining of necessary parties. Thus, formal permission to file fresh suit was not required.

6. Feeling aggrieved by the above said judgment and decree dated 30.03.2013 passed by the learned trial Court, defendants No.1 to 3 filed an appeal was filed before the learned lower Appellate Court. The said appeal was dismissed by the lower Appellate Court with the observations that plea of secondary evidence cannot be accepted because by relying a simple DDR entry is not sufficient to



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prove loss. Regarding application of Order 23 Rule 2 CPC, learned lower Appellate Court observed that previous suit was not decided on merits. Therefore, agreeing with the findings of the learned trial court the judgment and decree passed by the learned trial Court, was affirmed.

Submissions Made By Learned Counsel For The Parties

7. Learned counsel for the appellants argued that the jurisdiction of the Civil Court was barred in view of the notifications under Sections 4 and 6 of the Land Acquisition Act, and any challenge ought to have been made under Section 30 before the Land Acquisition Collector. He further contended that the suit was filed after 11 years from sanction of mutation, and therefore hopelessly barred by limitation. It is further argued that the Lower Courts erred in rejecting their application for leading secondary evidence of the Will, which was allegedly lost, ignoring the DDR entry (Ex. D1) and the plaintiffs/respondents failed to discharge their burden of proving the Will to be forged or fabricated. It is further argued that the impugned judgments and decrees passed by both the courts below are perverse to the evidence adduced by the parties and hence liable to be set aside. It is contended that the plaintiff had earlier filed a suit against the appellants/defendants which was withdrawn without obtaining liberty to file a fresh suit on the same cause of action. Accordingly, the present suit is barred by the principle of res judicata and under Order 23 Rule 1(4) of the CPC,

8. Learned counsel for the respondent No.1/plaintiffs, on the other hand, argued that the concurrent findings of fact recorded by both the Courts below are based on proper appreciation of evidence. He further argued that the Will relied upon by the appellants/defendants was never produced in original, and secondary evidence was rightly rejected as the requirements of Section 65 of the Indian Evidence Act were not fulfilled. Further, it is contended that the plea of bar of

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jurisdiction under the Land Acquisition Act was neither raised in the written statement effectively nor substantiated by any legal provision applicable to the nature of the relief claimed. He has further submitted that no specific issue was framed by the trial Court as to whether the present suit is barred by res judicata or under Order 23 Rule 1 CPC. Even otherwise, as disclosed in para No. 8 of the plaint, the earlier suit was withdrawn without being decided on merits. Therefore, the bar of res judicata has no application in the present case. Due to formal defect of non-joining of necessary parties i.e defendants No. 4 and 5, the earlier suit was withdrawn.

Findings

9. So far as contention of learned counsel for the appellants that suit is barred under Order 23 Rule 1 CPC is concerned, it is pertinent to note that the earlier suit filed by the respondents/plaintiffs had been withdrawn without seeking permission of the Court under Order 23 Rule 1(3) CPC to institute a fresh suit on the same cause of action. The effect of such withdrawal, in the absence of liberty, is that the respondents/plaintiffs are ordinarily precluded from re-agitating the same subject matter in a subsequent suit. However, in the present case, both the Courts below have concurrently observed that the said withdrawal was not an adjudication on merits, and the plaint had, in fact, disclosed the earlier litigation was withdrawn by the plaintiff as defendants No. 4 and 5 were not parties to that suit. Therefore, the bar under Order 23 Rule 1(4) CPC was held inapplicable in the peculiar facts of the present case. This finding, being one of fact and appreciation of evidence, warrants no interference in the present second appeal.

10. This Court in the case of *Shri Rai Singh Vs. Dr. Hemo Prabha Saikia and Others [2011 (38) R.C.R (Civil) 70]*, has held as under:-



“11. So far as withdrawal of second suit, which was filed for declaration only without claiming relief of possession is concerned, a bare perusal of aforementioned order passed by learned Civil Judge (Junior Division) shows that the suit was permitted to be dismissed as withdrawn in view of the grounds mentioned in application. In the application, as reproduced above, ground was taken by respondent-plaintiff to withdraw the suit for filing fresh suit for declaration and injunction. There was formal defect in the said suit, as suit for mere declaration is not maintainable without claiming relief for possession. In this case, admittedly, respondent-plaintiff was dispossessed by present petitioner even before filing of the first suit. Hence, the suit for declaration was withdrawn and thereafter the present suit was filed for declaration with a relief for possession.

12. In view of these facts, the only inference can be drawn is that permission to withdraw the suit for mere declaration vide order dated 4.10.2001 was deemed to be with liberty to file a fresh suit as there was formal defect in the earlier suit. Hence, there is no force in the argument of learned counsel for the petitioner that suit is barred either under Order 23, Rule 1 (4) of the Code or under Order 2, Rule 2 of the Code. On the point reliance is placed upon a judgment rendered by a coordinate Bench of this Court in **Lal Singh v. Ajit Singh 2008(3) RCR (Civil) 650**, wherein under similar circumstances it was observed that permission to withdraw is deemed to be with liberty to file a fresh suit as the Court would not permit withdrawal without permission to file fresh suit. In the present case as well, Court has not passed any specific order regarding assertion of respondent-

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plaintiff that she intends to file fresh suit for declaration and recovery of possession. Moreover, Court could not have refused permission to file fresh suit for declaration and possession regarding the subject matter in dispute as earlier suit was defective in view of peculiar facts and circumstances of the case.”

11. The above-said case law is fully applicable to the facts and circumstances of the present case. In the present case also, the Court has not passed any order regarding intention of the plaintiff to file fresh suit which impliedly gives permission to file fresh suit as the former suit was dismissed on formal defect.

12. Regarding, jurisdiction under the Land Acquisition Act, a perusal of the plaint would reveal that the relief sought was primarily declaratory, concerning the validity of the will and mutation, and not the quantum or apportionment of compensation under Section 30 of the Land Acquisition Act. Therefore, the Civil Court’s jurisdiction was not barred.

13. Now coming to the contention of learned counsel for the appellants regarding loss of Will and secondary evidence not allowed by the learned trial Court. A perusal of the record shows that the appellants/defendants admitted that the original Will was never produced before the revenue authorities at the time of sanctioning the mutation. The DDR entry (Ex. D1) was made during the pendency of the present suit and appears to be a self-serving document. An unregistered will, whose original is not forthcoming, cannot be accepted as genuine unless its execution is proved in accordance with Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. The lower courts rightly rejected the application for secondary evidence.



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Final Conclusion

14. In light of the foregoing discussion on the issues raised, this Court finds no illegality, perversity, or material irregularity in the concurrent findings recorded by the Courts below. The findings of fact recorded by the trial court and affirmed by the First Appellate Court are based on proper appreciation of evidence, supported by cogent reasons, and do not suffer from any infirmity warranting interference by this Court in exercise of powers under Section 100 CPC. The present Regular Second Appeal is, therefore, dismissed being devoid of merit.

15. Pending application(s), if any, also stand disposed off.

August 18, 2025

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**(MANDEEP PANNU)
JUDGE**

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No