

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JAI PUR BENCH, JAI PUR**ORDER**S. B. Civil Revision Petition No. 21/2006  
{Amar Singh & Others Versus Shiv Lal & Others}Date of Order :: 29<sup>th</sup> August, 2008

PRESENT

**HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN**Mr. Manu Bhargava for the petitioners  
Mr. M. M. Ranjan for the respondents**BY THE COURT:**

Heard learned counsel for the parties.

2. The plaintiff-respondent no. 1 filed a suit for specific performance of the agreement in the trial court, wherein the present petitioners filed a written statement on 4<sup>th</sup> August, 2005. Thereafter the defendants-petitioners filed an application under Order 7 Rule 11 CPC for dismissal of the suit on the ground that suit is barred by limitation and also by the principle of res-judicata as the earlier suit no. 14/93 (70/75) Sawanta & Others Versus Inder Singh relating to same agreement has already been disposed of. The trial court rejected the application vide order dated 17<sup>th</sup> December, 2005. Being aggrieved with the same, the defendants have preferred this revision petition.

3. The learned counsel for the petitioners contended that one Sawanta S/o Bhagya filed a suit against Inder Singh and Others in the court of Civil Judge (Senior Division), Behror in respect of agreement dated 9<sup>th</sup> August, 1984 and 22<sup>nd</sup> August, 1988, wherein present plaintiff Shiv Lal appeared as witness and deposed his statement. The said suit has been decided vide judgment dated 12<sup>th</sup> February, 2002, therefore, the present suit filed on behalf of Shiv Lal cannot be allowed to be continued in view of judgment dated 12<sup>th</sup> February, 2002. He further contended that the defendant-petitioners were impleaded as a party at a later stage when suit had already become time barred, therefore, the present suit was liable to be dismissed against them.

4. Learned counsel for the respondents submitted that the plaintiff-respondent Shiv Lal was not a party to earlier suit and it is the settled position of law that principle of res-judicata will apply where parties are same in old and present dispute. He further contended that suit was filed within a period of limitation and trial court has rightly rejected their application.

5. I have considered the submissions of

I earned counsel for the parties and examined the impugned order passed by the trial court. The trial court has observed that the earlier suit was filed by Sawanta against Inder Singh and others, but Shiv Lal -present plaintiff was not a party to the said litigation. Shiv Lal was examined in the earlier suit only as a witness, therefore, the principle of res-judicata is not applicable. The defendants have already filed their written statement in the trial court, wherein they have already raised both the objections. The question of res-judicata as well as limitation both are questions of facts and law both, in the facts and circumstances of the present case, therefore, it will be just and proper that trial court may frame issue in this regard and decide the case after taking evidence on them alongwith the main suit itself. In case the issues have not been framed so far, then the trial court will frame issue in respect of res-judicata and limitation also as per the pleading of the defendant-petitioners in their written statement. At this stage, no interference can be made by this Court in the impugned order. I do not find any jurisdictional error in the impugned order so

as to interfere with the same. There is no merit in this revision petition and the same is, accordingly, dismissed with no order as to costs.

**(NARENDRA KUMAR JAIN), J.**

**DK**