

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

**RSA NO.3692 OF 2008 (O&M)
DECIDED ON : 31.08.2009**

Ajit Singh

...Appellant

versus

Sarwan Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Parveen Kumar, Advocate
for the appellant.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgments of the Courts below dismissing the suit filed by the appellant for possession of 1/4th share of the house, originally owned by Gurdev Singh, which was sold to the appellant by his widow Sharanjit Kaur. The following questions have been proposed:

- i) Whether the instant suit filed by the appellant is barred by principal of res judicata?
- ii) Whether the appellant got the new cause of action to file the instant suit after the liberty was given by the Id. Additional Distt. Judge in the earlier suit to file the suit for possession?
- iii) Whether the suit is barred under Order 2 Rule 2 CPC?
- iv) Whether the judgment and decree passed by both the Courts below is liable to be set aside in view of the erroneous finding given on the legal issues?

Questions No.(i) to (iii) are over-lapping questions.

Learned counsel has placed on record copies of the judgments and decrees of the Trial Court as well as the Lower Appellate Court in the earlier suit and I have gone through the same with his assistance. In the present suit, both the courts below have held that a specific finding was recorded in the earlier suit that the plaintiff-appellant did not become owner of 1/4th share of the house, and the mere fact that plaintiff was allowed to file a fresh suit for possession would not entitle him to claim possession over the property, which had been declared not to be in his ownership. It was to this extent that the doctrine of res judicata has been applied against the appellant.

In my opinion, the approach of the Courts below is correct. The permission granted by the Lower Appellate Court in the previous case could extend only to that property which was found in the ownership of the appellant. In these circumstances, questions No.(i) to (iii) are held against the appellant. Question No.(iv) is an omnibus question relating to questions No.(i) to (iii) (supra) and the answer to that question would also have to be against the appellant.

Consequently, this appeal is dismissed. Since the main case has been decided, all the pending civil miscellaneous applications, if any stand disposed of.

August 31, 2009
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(AJAY TEWARI)
JUDGE