

Smt. Poonam Shukla Vs Khemchand Jain**493 of 2016**

Court: CHHATTISGARH HIGH COURT**Date of Decision:** Feb. 14, 2017**Acts Referred:**

[Constitution of India, Article 227](#) - Power of superintendence over all courts by the High Court#[Code of Civil Procedure, 1908, Order 26Rule 9](#)

Hon'ble Judges: Sanjay K. Agrawal**Bench:** Single Bench**Advocate:** Hari Agrawal, Pallav Mishra

Judgement

1. The petitioners are defendants before the trial Court. The trial Court by the impugned order rejected the application filed by the petitioners/defendants under Order 26, Rule 9 of the CPC holding that the petitioners' similar application has been rejected by order dated

7.5.2016 and suit is pending since 26.8.1993. Against which, this writ petition under Article 227 of the Constitution of India has been filed.

2. Mr. Hari Agrawal, learned counsel appearing for the petitioners, would submit that there is serious dispute regarding identity of land between the

parties and unless the Commissioner is appointed, no effective decree can be passed. He would further submit that dismissal of earlier application

would be a bar to entertain the second application.

3. Mr. Pallav Mishra, learned counsel appearing for the respondent, would submit that rejection of earlier application claiming similar relief at the

earlier stage of the suit would bar by the provisions of res-judicata and as such, second application is not maintainable particularly when there is no

dispute regarding identity of land between the parties.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made therein and also gone through the documents

appended with the writ petition.

5. It is not in dispute that earlier application filed by the petitioners for local inspection under Order 26, Rule 9 of the CPC has been rejected on

7.5.2016 and that order has attained finality as it has not been shown to be assailed successfully before the higher forum.

6. The Supreme court in the matter of Satyadhyan Ghosal and others v. Smt. Deorajin Debi and another AIR 1960 SC 941 has held that the

principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court

having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same

proceedings. It was observed as under:-

7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not

be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or on a question

of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher

court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties

to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even

where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The

result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was

correct.

8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher

court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the

same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way

and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again

?

7. In the matter of Y.B. Patil and others v. Y.L. Patil AIR 1977 SC 392, Their Lordships of the Supreme Court have been observed as under:-

4.....It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in

subsequent stage of the same proceedings. Once an order made in the course of a proceedings becomes final, it would be binding at the

subsequent stage of that proceeding.....

8. Further, Their Lordships of the Supreme Court in the matter of Barkat Ali & Anr. v. Badri Narain (D) by LRs. JT 2008(2) SC 201 have

considered the similar proposition of following judgment which is held as under:-

9. In *Arjun Singh v. Mohindra Kumar and others* AIR 1964 SC 993 it was observed as follows:

Scope of principle of res judicata is not confined to what is contained in Section 11 but is of more general application. Again, res judicata could

be as much applicable to different stages of the same suit as to findings on issues in different suits. Where the principles of res judicata is invoked in

the case of the different stages of proceedings in the same suit, the nature of the proceedings, the scope of the enquiry which the adjectival law

provides, the decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and the

relevant factors to be considered before the principle is held applicable.

9. In the present case, suit was filed on 26.9.1993 and the instant second application under Order 26, Rule 9 of the CPC was filed on 20.6.2016.

The grounds raised in this application are similar to that of the earlier application, which was rejected by the trial Court on 7.5.2016 on merits. The

order dated 7.5.2016 has attained finality.

10. After hearing learned counsel for the parties and in view of the fact that the petitioners/plaintiffs application has already been rejected on merits

and on the principle of res-judicata enumerated in *Satyadhyan Ghoshal* (supra) that it applies also between two stages in the same litigation and

reiterated in *Arjun Singh v. Mohindra Kumar & Ors.* AIR 1964 SC 993, the petitioners cannot be permitted to maintain the application under

Order 26, Rule 9 of the CPC which has earlier been rejected by the trial Court and which has become final. Consequently, I do not find any

illegality in the impugned order. Accordingly, the writ petition is liable to be and is hereby dismissed. However, considering the fact that suit was

filed on 26.8.1993, the trial Court is directed to expedite the trial and conclude the same within a period of four months from the date of

production of certified copy of this order.

Writ Petition is dismissed.