

passing a resolution deciding to file an appeal, the Municipal Committee must necessarily pass a separate resolution vesting authority in the Executive Officer to file the same. The ratio of all these judgments is that before filing an appeal a corporate body like the Municipal Committee must pass a resolution deciding to file the same. We have no quarrel with this proposition of law.

10. For the reasons discussed above, we are unable to subscribe to the view taken by the Single Bench in *Garib Chand's case* (supra), and resultantly over-rule the same. We hold that once the Municipal Committee decides to file an appeal by passing a resolution, its Executive Officer is empowered to file the same by virtue of section 4 of the Act. This case be now placed before the Single Bench to decide the second appeal on merits.

S. P. Goyal, J.—I agree.

H.S.B.

Before D. V. Sehgal, J.

GURDIAL SINGH,—Appellant.

versus

SOHNA SINGH and others,—Respondents.

Regular Second Appeal No. 1958 of 1977.

April 1, 1986.

Code of Civil Procedure (V of 1908)—Section 11, Explanation (IV)—Punjab Security of Land Tenures Act (X of 1953)—Sections 9 and 14-A—Suit land leased out in perpetuity by unregistered document—Lessee failing to fulfil the obligations of the lease and lessor filing suit for rent as also for possession—Said suit dismissed on the ground that the lease deed being unregistered was inadmissible in evidence to prove the lease—Subsequent suit for possession filed claiming that defendant was in unauthorised possession of the suit land—Second suit—Whether barred by the principles of constructive res-judicata.

Held, that the principle of constructive *res judicata* embodied in Explanation IV to Section 11 of the Code of Civil Procedure, 1908 is not a strait jacket formula. It depends on the facts of

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each case whether a matter ought to have been made a ground of attack or defence in the previous suit. One of the most important tests to see whether a plea ought to have been raised is to find out whether the matter raised in the two suits are so dissimilar that their union might lead to confusion. Pleas which are irrelevant to the earlier suit cannot be said to be such as ought to have been raised therein. The previous suit filed was for the recovery of rent and for ejection of the lessee on the ground that the lessee had committed breach of the terms of contract of lease. In fact, the tenant of agricultural land can be ejected only by having recourse to Sections 9 and 14-A of Punjab Security of Land Tenures Act, 1953 and such a suit is clearly barred by the provisions of the said Act. At any rate the lessor maintained that the lessee was his tenant and was liable to pay rent for the period in question and was liable to ejection by virtue of the lease deed which was held to be inadmissible in evidence and this resulted in the failure of the suit. The lessor/landlord could not have claimed in the earlier suit that the tenant was in unauthorised possession of the suit land and seek his dis-possession on this basis. Such a plea would have been destructive to the one taken in the earlier suit that there was a relationship of lessor and lessee between the parties. As such it has to be held that the subsequent suit filed by the landowner is not barred under the principles of constructive *res judicata* as embodied in Explanation IV to Section 11 of the Code.

(Para 5).

Regular Second Appeal from the decree of the Court of the Addl. District Judge, Bhatinda, dated the 15th day of October, 1977, affirming that of the Sub-Judge IIrd Class, Phul, dated the 9th day of December, 1975, dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

J. R. Mittal, Advocate, for the appellant.

J. S. Randhawa, Advocate, for the Respondents.

JUDGMENT

D. V. Sehgal, J.—

(1) Gurdial Singh plaintiff-appellant instituted the instant suit against Sohna Singh and his sons Zaila Singh, Karnail Singh and Ajaib Singh defendant-respondents for possession of agricultural land measuring 10 Kanals, 3 Marlas situated within the revenue estate of village Bhai Rupa Patti Sanjhi on the basis of title. He

alleged that he is the sole owner of the land and the defendants have no right or interest therein. They were in forcible possession of the suit land for about 5 years prior to the institution of the suit. In spite of his repeated demands, they had not delivered back the possession of the suit land to him. The defendants except Ajaib Singh, who was proceeded against *ex-parte*, contested the suit. They filed a joint written statement and denied the plaintiff's title to the suit land. They asserted that they have been in its adverse possession for more than 12 years. They further pleaded that the plaintiff-appellant had instituted an earlier suit for its possession which was dismissed by the learned Sub-Judge, Phul,—*vide* judgment and decree, dated 23rd January, 1973 Civil Appeal No. 46/163/198 of 1973 filed by the plaintiff was also dismissed on 1st August, 1973, by the learned Additional District Judge, Bhatinda. On these facts, it was contended that the instant suit is barred by the principle of *res judicata*. Further legal pleas that the suit is barred by limitation, that the Civil Court has no jurisdiction to entertain the suit and that the suit had not been properly valued for the purposes of court-fee and jurisdiction were also raised. The suit was ultimately dismissed by the learned Sub-Judge, Second Class, Phul,—*vide* judgment and decree dated 9th December, 1975. It was held that the plaintiff-appellant is the owner of the suit land; that he had not sold any part of it to Karnail Singh, defendant-respondent; that the suit was properly valued for the purposes of court-fee and jurisdiction; that it was within limitation; that the civil Court had the jurisdiction to entertain the suit; and that the defendant-respondents were not the tenants on the suit land nor were they in adverse possession of the same for more than 12 years. While deciding issue No. 6, it was held that in view of the failure of the plaintiff-appellant in the earlier suit and the appeal, the instant suit was barred by the principle of *res judicata*. It was on this solitary ground that the plaintiff-appellant failed in the suit. He filed an appeal which also failed and was dismissed by the learned Additional District Judge, Bhatinda,—*vide* judgment and decree dated 15th October, 1977. He has, thus, filed the present regular second appeal in this Court.

(2) I have heard the learned counsel for the parties. The only question that has to be decided is whether the instant suit is barred by the principle of *res judicata*, as held by the learned Courts below. I have perused a copy of the plaint of the previous suit Ex. D. 2 as also a copy of the judgment Ex. D. 3,—*vide* which the

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appeal of the plaintiff-appellant filed against the judgment of the learned trial Court dismissing his earlier suit had failed and was dismissed. Ex. D. 2 shows that the plaintiff-appellant had alleged therein that he had given possession of the suit land to Sohna Singh defendant-respondent No. 1 by means of an agreement dated 5th February, 2006 BK and the latter had agreed to supply him 13 maunds of wheat and 2 maunds of gram every year. Since the supply in question was not made to him by respondent No. 1 in the year 1967, he had filed a suit for recovery of Rs. 490/- as price of the grains. Again, nothing was supplied to him by respondent No. 1 in the years 1968, 1969 and 1970. He, therefore, filed the suit claiming price of the grains at Rs. 300/- per year and further alleging that since respondent No. 1 had committed breach of the agreement, he claimed possession of the suit land. A perusal of the judgment Ex. D. 3 shows that the agreement dated 5th February, 2006 BK was in the form of a lease in perpetuity and since it was an unregistered document it was inadmissible in evidence. Resultantly, therefore, lease of the suit land in favour of respondent No. 1 was held not to have been proved and the plaintiff's suit was dismissed both by the learned trial Court as also in appeal.

(3) The learned Additional District Judge has held that when the earlier suit was filed by the appellant for possession on the ground that respondent No. 1 had committed breach of the terms of the lease, it was open to him to claim possession on the ground that respondent No. 1 was in unauthorised possession of the same. This plea could be taken in the earlier suit by the appellant as an alternative plea. He has relied on Explanation IV to section 11 of the Code of Civil Procedure (hereinafter called 'the Code') and has also placed reliance on the judgments cited by the learned trial court viz., *Krishnaswami Mudaliar v. Manikka Mudali* (1), *Mt. Sukh Rani and another v. Gujraj Singh and others* (2), and *Narayanan Nair Govindan Nair v. Narayanan Nair Naryanana Nair and others* (3), to hold that the principle of constructive *res judicata* was applicable to the facts of the case and the instant suit was, therefore, barred.

(4) Besides relying on the authorities cited in the judgments of the learned Courts below, the learned counsel for the respondents

(1) AIR 1931 Madras 268.

(2) AIR 1942 Oudh 354.

(3) AIR 1956 Travancore-Cochin 266.

has also placed reliance on *Man Mohan Lal v. B. D. Gupta* (4), and *Luvar Popat Kala v. Luvar Bachu Rugnath and others* (5). He contends that when a suit for ejectment of a tenant is based on the ground that the premises under lease had been used in breach of the contract of tenancy and another ground though open was not taken and the suit was dismissed, a subsequent suit for ejectment based on the other ground was barred by the principle of *res judicata*. He further contended that when a suit is filed by an owner initially on the basis of title and fails, a subsequent suit filed by him on the ground that he had acquired title by adverse possession is barred by *res judicata*.

(5) I have carefully examined the authorities cited by the learned counsel for the respondents. The principle of constructive *res judicata* embodied in Explanation IV to section 11 of the Code is not a strait jacket formula. It depends on the facts of each case whether a matter ought to have been made a ground of attack or defence in the previous suit. One of the most important tests to see whether a plea ought to have been raised is to find out whether the matters raised in the two suits are so dissimilar that their union might lead to confusion. Pleas which are irrelevant to the earlier suit cannot be said to be such as ought to have been raised therein. Reference to Exs. D. 2 and D. 3 makes it abundantly clear that the previous suit by the plaintiff was for the recovery of rent and for ejectment of respondent No. 1 as lessee on the ground that he had committed breach of the terms of the contract of lease. In fact, a suit against a tenant of agricultural land for his ejectment in the civil court is clearly barred by the provisions of the Punjab Security of Land Tenures Act (hereinafter called 'the Punjab Act'). Such a tenant can be ejected only by having recourse to sections 9 and 14-A of the Punjab Act and an application for ejectment is maintainable before the Assistant Collector. At any rate, while maintaining that respondent No. 1 was his tenant who was liable to pay rent for the period in question and was also liable to ejectment was filed by the appellant in his capacity as landlord *qua* respondent No. 1 who is lessee by virtue of the agreement dated 5th February, 2006 BK, which was held to be inadmissible in evidence and resulted in the failure of his suit. The appellant could not have claimed in the earlier suit that respondent No. 1 was in an unauthorised possession of the suit land and seek his dispossession on this

(4) AIR 1964 Pb. 408.

(5) AIR 1958 Bombay 152.

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basis. Such a plea would have been destructive to the one taken in the earlier suit that there was a relationship of lessor and lessee between the appellant and respondent No. 1. I am, therefore, of the considered view that the instant suit was not barred by the principle of *res judicata*. The finding to the contrary recorded by the learned Courts below on issue No. 6 is, therefore, reversed.

(6) Since according to the concurrent findings of the learned Courts below, the appellant is the owner of the suit land and respondents are in its unauthorised possession, he is entitled to a decree for possession of the same.

(7) Consequently, I allow this appeal, set aside the judgments and decrees of the learned Courts below and decree the suit of the appellant with costs throughout.

H.S.B.

Before J. V. Gupta, J.

GRAM PANCHAYAT MEHAR KALAN,—Petitioner.

versus

RAM SINGH and others,—Respondents.

Civil Revision No. 571 of 1986.

April 16, 1986.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 11 and 13—Plaintiff filing suit seeking declaration to be owner of suit land claimed also by Gram Panchayat—Section 11 conferring on Collector under the Act jurisdiction to decide the matter—Section 13 of the Act—Whether bars the jurisdiction of the Civil Court—Such suit—Whether maintainable.

Held, that from a reading of Sections 11 and 13 of the Punjab Village Common Lands (Regulation) Act, 1961, it is quite obvious that in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine, the jurisdiction of the civil court is barred. Section 11 clearly provides that the Collector shall have the jurisdiction to decide the question as