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**(2007) 08 P&H CK 0035**  
**In the Punjab And Haryana At Chandigarh**

|                                                 |            |
|-------------------------------------------------|------------|
| Smt. Bhani (Dead) through her L.Rs. and Another | APPELLANT  |
| Vs                                              |            |
| The Punjab Business and Supply Co. Pvt. Ltd.    | RESPONDENT |

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**Date of Decision :** 03-08-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11

**Citation :** (2008) 2 PLR 389 : (2008) 3 RCR(Civil) 466

**Hon'ble Judges :** Arvind Kumar, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Arvind Kumar, J.—This regular second appeal is being preferred by the appellants-defendants who have lost concurrently before the two courts below and the findings have been returned against them in respect of their illegal occupation of the suit property, shown as ABCD in the site plan attached with the plaint. That apart, the appellants have also been required to pay Rs. 500/- as damages for use and occupation of the suit property along with the costs of the suit to the respondent-plaintiff.

2. The relevant facts necessary for the disposal of the instant appeal and emerging out from the record of the case are that the plaintiff-Company, claiming itself to be owner of the plot measuring 8 marlas, fully described in the suit itself and shown as ABCD in the site plan attached, filed a suit against Bhani Devi and another (appellants herein) for possession of the suit property and recovery of Rs. 500/- as compensation on account of its use and occupation by them from 25.7.1970 to 25.7.1973. It was the case of the plaintiff that by dint of sale-deed dated 30.6.1964, they had purchased the suit property along with other land, but the defendants, who have no right in the same, have illegally encroached upon the suit property and have enjoyed the same for number of years.

3. On the other hand, the case of the defendants was that the suit is barred by

principle of res judicata, as the earlier suit filed by the plaintiff Company in respect of that very suit property was earlier dismissed by the trial court and subsequent suit is not maintainable. Though the ownership of plaintiff in respect of the suit property was admitted by the defendants, but it was pleaded that the plot in question was given to them by the plaintiff as gift and as compensation on account of death of Sh. Buta Ram, the husband of defendant No. 1, for the services rendered by the deceased to the plaintiff Company. It was further alleged that they had raised a construction over the plot in question and have incurred expenses of about Rs. 10,000/- and have become the owner of the same.

4. The issues were settled and both the parties led their respective evidence in support of the same.

5. After appraisal for the evidence adduced by both the parties, the learned trial court decided all the issues against the defendants and in favour of the plaintiff, in the manner indicated above.

6. Dissatisfied with the same, instant regular appeal has been preferred by the defendants.

7. I have heard learned Counsel for the parties and with their able assistance have also gone through the case file carefully.

8. After considering the rival submissions of learned Counsel for the parties, this Court is of the considered opinion that the substantial question of law which requires determination of this Court is:

Whether the suit of the plaintiff-respondent is barred by the principle of res-judicata?

This issue covers the whole controversy between the parties.

9. Section 11 of the CPC provides that "no court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. It is well known that Order 2 Rule 2 CPC is based on the salutary principle that a defendant or defendants should not be twice vexed for the same cause by splitting the claim and the relief. The Rule does not preclude a second suit based on a distinct cause of action. It may not be out of place to clarify that the doctrine of res judicata differs from the rule embodied in Order 2, Rule 2, in that, the former places emphasis on the plaintiffs duty to exhaust all available grounds in support of his claim while the latter requires the plaintiff to claim all reliefs emanating from the same cause of action.

10. In the instant case, no doubt the previous suit was between the same parties and the subject matter was also part of the suit premises so much so the said

suit was for 2-1/2 marlas of land. Though the defendants claim that they are in possession of 6 marlas of land whereas the present suit is for possession 6 marlas of land. In the previous suit the findings on all the issues though were in favour of the plaintiff, but the same was dismissed on the technical ground as the same was found to be not filed by competent person. Therefore, the dismissal of the earlier suit was on technical ground of defective authorisation. Secondly; earlier suit was for 2-1/2 marlas of land whereas the present suit relates to 6 marlas of land. It can be concluded from the evidence of Ranbir Chand, attorney of the plaintiff, whose statement was recorded on 16.8.1978 wherein he has specifically deposed that about 6 years back the defendants took the forcible possession of the suit land measuring 6 marlas, to say that the defendants came into possession of 6 marlas of land somewhere in the year 1972 i.e., subsequent to the decision of the earlier suit. Moreover, the controversy between the parties comes to its dead-end in the light of. law laid down by the Hon"ble Supreme Court in the case of Smt. V. Rajeshwari Vs. T.C. Saravanabava, , wherein earlier suit was relating to only part of property, while in the later suit the entire property was involved, it was held that it will not constitute resjudicata.

11. Thus, nothing supports the plea of the appellants that the suit is barred by principia of resjudicata. In view of what has been said hereinafter, the question of law, referred to above, is answered against the appellants. The appeal is accordingly dismissed, leaving the parties to bear their own costs.