

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 30.11.2010*

+ **RSA No.14/2008 & CM No.954/2008(for stay)**

SMT. MEWA & ORS. Appellants
Through: Mr.Anil Kumar, Advocate.

Versus

MOHINDER SINGH & ORS. Respondents
Through: Mr.N.S.Dalal and Mr.Devesh Pratap
Singh, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 12.9.2007 which has endorsed the finding of the Trial Judge dated 15.5.2006 whereby the decree dated 31.7.1962 passed in Suit No.164/1972 had been set aside.

2. This is a second appeal. On behalf of the appellant, it has been urged that the findings in the impugned judgment are perverse; it had overlooked the provisions of Article 59 of the 1st Schedule of the Limitation Act, 1963 which is contained in Part IV and provides a period of three years to set aside a decree; in this case the decree dated 31.7.1962 had been assailed in a suit which had been filed in the year 1989 i.e. after a gap of more than 27 years; this was an arbitrary finding; this has raised a substantial question of law.

3. Perusal of the record shows that the present suit had assailed the decree dated 31.7.1962. This suit was filed in the year 1989. The first Court i.e. the Trial judge vide judgment dated 26.5.1992 had dismissed the suit holding that it is barred by limitation. In appeal learned Additional District Judge had returned a positive finding on 27.8.2003 whereby it was held that no period of limitation is prescribed to set aside a decree which is nonest and a nullity. It was held that the decree dated 31.7.1962 passed in suit No.164/1962 is void ab initio; no limitation is prescribed to set aside or seek a declaration for the cancellation of such a decree. This was a positive finding returned by the learned Additional District judge on 27.8.2003 thereafter the matter had been remanded back to Trial Judge for decision on the remaining issues. This finding of the Additional District Judge dated 27.8.2003 holding that the suit is not barred by limitation has admittedly not been challenged.

4. Thereafter the Trial Judge (after the matter had been remanded back to him) had decreed the suit in favour of the plaintiff on 15.5.2006 returning a finding that the decree dated 31.7.1962 in suit No.164/1962 is null and void. This finding had been endorsed by the first Appellate Court on 12.9.2007 which is the impugned judgment.

5. Learned counsel for the respondent has pointed out that the judgment of 27.8.2003 has since attained a finality and it was a positive finding returned by learned Additional District Judge that the suit is not barred by limitation and the said finding not having been challenged it cannot now be challenged by way of this second appeal. It is barred by limitation.

6. This submission of the learned counsel for the respondent has force. Admittedly the finding of the learned Additional District Judge dated 27.8.2003 holding that the suit is not barred by limitation has not been challenged; it cannot now be taken up in this second appeal which had been filed in the year 2008 i.e. after a lapse of five years. No substantial question of law has arisen qua this submission.

7. It is further pointed out by learned counsel for the appellant that the prayer clause in the plaint shows that the plaintiff had also sought a declaration that late Sultan Singh, Dhani Ram and Chatru be declared as the legal heirs to inherit the share of late Jot Ram in the suit land; the findings qua this aspect are also perverse. Before advertng to this submission of the learned counsel for the appellant it is relevant to state that once the decree dated 31.7.1962 was held to be void ab initio i.e. null and void, the necessary consequence would be that late Sultan Singh, Dharam Ram and Chatru would be the legal heirs entitled to the share of late Jot Ram. Even if this second prayer did not find mention in the plaint, the consequence of the decree dated 31.7.1962 having been declared null and void would be that Sultan Singh, Dhani Ram and Chatru would be the legal heirs of Jot Ram. This was the necessary consequence and the repercussion which would have followed. No substantial question of law has arisen on this point either.

8. Appeal as also the application is dismissed in limine.

INDERMEET KAUR, J.

NOVEMBER 30, 2010
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