

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

RSA No.1241 of 2011

DATE OF DECISION:22.01.2015

Satbir

...Appellant

Vs.

Rameshwar Dass & ors.

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Parmod Chauhan, Advocate  
for the appellant.

Mr. Anil Rathi, Advocate  
for the respondents.

**AMIT RAWAL, J.(ORAL)**

This order of mine shall dispose the present Regular Second Appeal which is directed against the judgments and decrees of both the Courts below whereby suit of the appellant-plaintiff for declaration to the effect that the order dated 06.09.1983 passed by the Director, Consolidation being null and void and not binding upon the rights of the appellant/plaintiff was dismissed by the trial Court. However, in appeal the learned lower appellate Court rendered the finding partly in favour of the appellant-plaintiff by holding that the order dated 06.09.1983 passed by the Consolidation Officer was not sustainable in the eyes of law as Additional Director Consolidation had no power under Section 42 of the Act to declare the said order as null and void and rendered the finding in favour of the

appellant-plaintiff and against the respondent-defendant. However, on the ground of limitation, the lower appellate Court found that the suit was barred by limitation as it was filed in December 2003, whereas the order under challenge was passed in the year 1983.

The learned counsel appearing on behalf of the appellant-plaintiff contends that the order of consolidation dated 06.09.1983 was passed at the back of the appellant-plaintiff and he came to know only when in 2003 the mutation was effected, whereas, learned counsel for respondent-defendant No.1 submits that the co- sharer, namely Bindra-defendant No.2 appeared before Consolidation Officer in response to the application filed by the defendant No.1 for providing a rasta. In support of his contention he has placed reliance upon a Full Bench judgment rendered in the case of **Biru Vs. Suraj Bhan, 1983 PLR 568** to say that it is not necessary that all the co-sharers must first be impleaded and then served individually and where an adequate hearing is given to one or some of the co-sharers is in the eye of law a hearing of all the body of co-sharers in the absence of fraud or collusion or the failure of any fair and real trial of the issue.

Learned counsel for the appellant-plaintiff in rebuttal submitted that the plaintiff has proved the ingredients of fraud and collusion.

I have heard learned counsel for the parties and perused the judgment and decrees as well as the record of the Trial Court.

Argument of the learned counsel for the appellant-plaintiff is devoid of merits as the appellant failed to prove the ingredients of fraud as enshrined in Order 6 Rule 4 of Code of Civil Procedure. It is a matter of record that one of the co-sharer-defendant No.2 appeared before the

Consolidation officer. In evidence, the plaintiff could not prove that the order has been held to be illegal and void. The respondent-defendant categorically pleaded in the written statement that new passage was carved in the eastern killa Nos. 22/22, 22/2, 27/9, 27/12 and 27/19 on the application moved by the defendant No.1 and the plaintiff had ingress and outgress to his fields through the passage since the year 1983. The said claim in the written statement was not specifically denied by the plaintiff by filing any rejoinder. The fact remains that the appellant-plaintiff had the knowledge of the rasta being carved out in the year 1983 as defendant had been using an ingress and outgress and remained silent for almost 20 years and the purported cause of action alleged to have accrued in the year 2003 was just an excuse to bring the suit within a period of limitation.

The appellant-plaintiff failed to give any explanation as to how the suit was within period of limitation. Suit was filed on 16.12.2003 and the order challenged therein was passed on 06.09.1983 and the story projected by the appellant-plaintiff, as already observed above, was not believable. Moreover one of the co-sharer, Bindra, had appeared before the authority when the order dated 06.09.1983 was passed and thereafter it cannot be said that the appellant-plaintiff had no knowledge of the impugned order, knowledge of which he may have acquired either through his father or other co-sharers. The lower appellate Court rightly held that the suit of the appellant-plaintiff was barred by law of limitation.

The findings recorded by the lower appellate Court have been rendered on the basis of appreciation of oral and documentary evidence. No substantial question of law arises for adjudication of this Court.

Accordingly, this appeal is dismissed. There shall be no order as to costs.

22.01.2015  
rimpal

**(AMIT RAWAL)**  
**JUDGE**