

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

**Regular Second Appeal No.773 of 2012 (O&M)  
Date of decision : 05.05.2015**

**Braham Dutt**

**....Appellant**

**versus**

**Suresh and another**

**...Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Tarundeep Kumar, Advocate,  
for Ms. Geeta Singhwal, Advocate,  
for the appellant.

Mr. Ashok Kaushik, Advocate,  
for the respondents.

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**RITU BAHRI, J.**

Plaintiff-appellant has come up in regular second appeal against the judgments and decrees dated 12.08.2009 and 19.11.2011 passed by the Courts below, whereby his suit challenging the consent decree dated 07.12.1991 has been dismissed.

Ravi Dutt, father of Braham Dutt-appellant, filed a suit against his two sons namely Suresh and Vishnu-defendants alleging that he owned a share in land measuring 28 Kanals 4 Marlas. He had four sons. Vishnu was youngest and was minor at the time of institution of earlier suit. His date of birth was 12.12.1974. Ravi Dutt-plaintiff wanted to execute a Will in favour of his four sons. Accordingly, Suresh brought him to Dadri for execution of a Will and obtained his signatures on some blank papers, on the basis of which, he obtained a consent decree by playing fraud upon him.

As per plaintiff, he appended his signatures on those papers assuming that he was executing a Will. Neither any family settlement had taken place nor there was any reason for such settlement. On the basis of aforesaid consent decree, Vishnu and Suresh-defendants have claimed themselves to be owners of the suit land.

Upon notice, defendants appeared and filed their separate written statements while controverting the allegations levelled by the plaintiff in his suit. It was submitted that no fraud was played upon the plaintiff and the consent decree was valid and binding upon the parties.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is owner in possession of the suit land as fully detailed in the head note of the plaint, as alleged? OPP
2. Whether the plaintiff has got no locus standi to file the suit? OPD
3. Whether the suit is time barred? OPD
4. Whether the suit is not maintainable? OPD
5. Relief.

Both the Courts have dismissed the suit filed by the plaintiff-appellant.

As per the provisions of Order 23 Rule 3 CPC, remedy available to the plaintiff-appellant was to move an application before the Court which had passed the consent decree dated 07.12.1991 or to prefer an appeal under Section 96 (2) and Order 43 Rule (i) and (ii) CPC. In the present case, the consent decree was passed in the year 1991 and the present suit was instituted on 14.06.2002 i.e. after a gap of almost 11 years.

Keeping in view the provisions of Order 23 Rule 3 CPC, no ground is made out to interfere in the impugned judgments.

No substantial question of law arises for consideration.

Dismissed.

**(RITU BAHRI)**  
**JUDGE**

05.05.2015  
ajp