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

**RSA No. 352 of 2013 (O&M)
Date of decision : 30.07.2015**

Takdeer Singh ...Appellant

versus

Smt. Prem Chaudhary ...Respondent

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

Present: Mr. Sanjay Mittal, Advocate
for the appellant

Mr. Sunil Chadha, Sr. Advocate with
Mr. Kirpal Singh, Advocate
for the respondent/caveator.

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RITU BAHRI , J.

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiff-appellant(herein after to be referred as 'the appellant') was dismissed.

Brief facts of the case are that the appellant had purchased land in dispute vide registered sale deed dated 11.02.1992 from Virender Singh for a sum of Rs.19,000/-. The respondent is wife of Dilbagh Singh, real brother of the appellant, who is in service as a

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senior P.C.S Officer in U.P Govt. and appellant was under the influence of Dilbagh Singh, who has been taking undue advantage of his status. The respondent had assured that her husband will get transferred the property in Arya Nagar Jhajjar along with property of the appellant and will further get him employed in Government Job, if the appellant suffers the consent decree in favour of the respondent. Thereafter, the respondent filed a civil suit NO. 239 of 19.04.1993 against the appellant and got a consent decree passed in her favour regarding the disputed plot on 21.12.1993 from the Court of learned Sub Judge Ist Class, Jhajjar.

On notice, the respondent appeared and filed her written statement and on merits, she denied that the appellant was owner in possession of the plot in dispute and the disputed plot fell in to the share of the respondent in the family settlement as the same was purchased from the income of joint agricultural land of the family. It was denied that the appellant was under the influence of her husband i.e Dilbagh Singh and she has been taking undue advantage of his status. She admitted that she filed a civil suit No. 239 against the appellant regarding the plot in dispute and the same was decreed in her favour on 21.12.1993.

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To prove its case, the appellant examined himself as P.W.1 and Surajbhan as P.W.2 and Smt. Bharpai as P.W.3.

P.W.2 filed his affidavit as P.W.2/A deposing that Takdeer is his real brother and Smt. Prem Chaudhary is her sister in law. He, Takdeer Singh and Dilbagh Singh are real brothers. The plot in dispute is of Takdeer Singh and the decree passed in the year 1993 was got executed by Takdeer Singh in favour of the respondent under the undue influence of the respondent as she and her husband had assured the appellant to adjust him in the government job. The possession of the plot could not be given to the respondent as Virender Singh was also having share in the same. In cross examination, he deposed that Takdeer is involved in the business of property since the last 23 years and he is a graduate person and P.W.2 is not on talking terms with Dilbagh Singh for the last 23 years.

Smt. Bharpai P.W.3 appeared and tendered in evidence her affidavit as Ex PW3/A deposing therein almost the same facts as have been deposed by P.W.2.

On the other hand, respondent examined D.W.1 who stated that on 30.11.1993, Takdeer Singh has come to him along with the plaint of civil suit No. 239/1993 and has asked him that a family

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settlement has taken place between him and respondent in April, 1992 and in the said family settlement, he has prepared the written statement on the instructions of Takdeer Singh and same was signed by him after being read over to him. He tendered in evidence copy of written statement as Ex D2. Thereafter, on the same day Takdeer Singh has made statement Ex D3 n the Court.

D.W.2 Dilbagh Singh deposed that Takdeer Singh and Surajpal are his brothers. He deposed that they were having 15.5 acres ancestral land at village Maroth, which is joint and has not been partitioned so far. He deposed that in the year 1991, the land of his share was cultivated by Takdeer Singh and cultivation of the same was also taken by him. He deposed that Takdeer Singh has earned Rs.90,000/- by cultivating his land and has not paid anything to him. The plot in dispute was purchased by Takdeer Singh in the month of February, 1992 from the above said agricultural income and thereafter, in the month of April, 1992, a family settlement took place between them and in the said family settlement, the said plot came to the share of his wife and thus she filed a suit against the appellant in which he appeared and filed his written statement Ex D2 and also made statement ExD3 admitting the claim of the respondent/plaintiff in toto.

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After going through the evidence led by the parties, both the Courts below dismissed the suit of the appellant by holding that it is admitted fact that since 1989, appellant and respondent were residing jointly and the appellant was cultivating the land of the share of the respondent. The appellant has executed the impugned decree dated 21.02.1993 and now in the present suit, the appellant had challenged the decree dated 21.02.1993 but in civil suit No. 1250 of 1990, the appellant/defendant has filed the written statement admitting the claim of the respondent/plaintiff. There is no disputed that vide sale deed Ex P1 dated 11.02.1992, he has purchased the suit property from one Virender Singh. To prove the fraud, misrepresentation, the appellant has placed on record copy of the application form dated 26.09.1998 vide which he has applied for a job in Haryana State Agriculture Marketing Board and the copy of bank draft Ex P3 which was attached with the said application form but the appellant was not able to prove the fact regarding undue influence as the same are relating to the year 1998 whereas the impugned judgment and decree was passed on 21.12.1993. Further, the appellant appeared in the Court on 21.12.1993, filed his admitted written statement and also made statement admitting the claim of the

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respondent. The appellant is a graduate person and is doing the property business and admitted by him in cross examination, while appearing as P.W.1, he is earning Rs.30,000/- to Rs.40,000/- per month from the property business therefore, it is proved on record that he is an intelligent person and is not so dull that he can come under any undue influence of any person. Thus, there is no cogent and consistent evidence led by the appellant on the basis of which it can be ascertained that the appellant was under any undue pressure of the respondent.

Further the impugned judgment and decree was passed on 21.12.1993 and the present suit was filed on 22.11.2000 after a gap of 07 years, thus it was held to be barred by limitation as held by this Court in a case of ***Surinderpal Singh and anr.v. Dhruvinderpal Singh and others, 2008(4) SCC 705 (P&H)***.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

30.07.2015 **(RITU BAHRI)**
G Arora **JUDGE**

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