

129.

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

Regular Second Appeal No.1438 of 2015 (O&M)

Date of decision: 03.12.2015

Tarawati

... Appellant

versus

Kunal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikram Sheoran, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

CM No.4037-C of 2015

For the reasons stated in the application, delay of 1331 days in refiling the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.1438 of 2015

1. The plaintiffs, who sought to contend that a decree obtained by some of the defendants against the father was null and void, failed in their action on account of the fact that the father had suffered a decree on 01.05.1993 and mutations had been effected pursuant to the decree. The suit had been laid on 01.06.2002 long

after the death of the father. If the father had allowed his own right to be transmitted to some of his daughters and suffered a decree, an estoppel that may operate against the father will operate equally against the plaintiffs as well. A decree suffered by the father cannot be assailed by the daughters unless vitiating circumstances as having been attendant on the father at the decree had been established and that an action was taken to set aside the decree within a period of 3 years from the time when fraud was noticed. A decree suffered by a father must be taken to be the date when the fraud was committed if such a contention was tenable at all and the plaintiffs cannot reopen an issue of how the property had been dealt with during the lifetime of the father himself.

2. The plaintiffs will have a share as claimed by them only if the property had fallen for succession and the estate had remained in the hands of the father. If the father had allowed some of his daughters to take possession and got the revenue entries mutated during his lifetime, it should only be taken that the father himself was a consenting party and the plaintiffs cannot reopen the same.

3. The learned counsel also states that one of the parties in the previous suit was a minor, it had been treated as though she was the major. The minor can always take benefit of transaction and only any detriment suffered cannot be used against a minor on attaining majority. I do not think that there was any error that was

so fundamental as to cast a cloud on the effect of the decree itself.

4. The judgments of the courts below are confirmed and the second appeal is dismissed as involving no substantial question of law.

(K.KANNAN)
JUDGE

03.12.2015
sanjeev