

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

-.-

CR 1238 of 2014 (O&M)
Date of decision: 12.02.2016

Subhash

..... *Petitioner*

Versus

Murti Devi

.....*Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sandeep Singal, Advocate
for the petitioner

Mr. D K Tuteja, Advocate
for the respondent

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

Rekha Mittal, J. (oral)

The present petition has been directed against the order dated 15.01.2014 (Annexure P5) passed by the Civil Judge (Junior Division) Rohtak.

The petitioner filed a suit for declaration and consequential relief of permanent injunction in respect of house No. 228, measuring 200 square yards, situated at Village Kalanaur, District Rohtak, detailed in para 1 of the plaint. The petitioner claimed ownership in the suit property to the extent of half share on the premise that Akhey Ram, grand father of the petitioner (erstwhile owner) left behind two sons namely Raghunath and

Jagdish. The parties to the suit along with other legal heirs of Raghunath and Jagdish have inherited the suit property in equal share, therefore, the entries made in the assessment register of Municipal Council/Corporation in the name of successors-in-interest of Jagdish to the exclusion of petitioner are liable to be corrected.

The respondent/defendant filed the written statement, contested claim of the petitioner primarily on the plea that Akhey Ram suffered a judgment and decree dated 16.04.1986 in favour of Jagdish, the predecessor-in-interest of the respondent, therefore, entries in the municipal records have been correctly made.

Subsequent thereto, the petitioner filed the instant application seeking amendment of the plaint in order to assail the judgment and decree dated 16.04.1986 on the ground(s) sought to be added by way of amendment in the plaint. After seeking reply from the respondent, the application was dismissed by the learned trial Court vide the impugned order.

The learned trial Court has held that the petitioner has failed to show any cause that now he came to know about the entries and he never tried to find out how the land was entered in the name of the defendant whereas the respondent got the suit property by obtaining a decree passed on 16.04.1986 through a civil Court. It was further held that it cannot be presumed that the petitioner did not have the knowledge of the fact and as a result, the application was dismissed.

Counsel for the petitioner contends that as the petitioner gained knowledge of the judgment and decree only after filing of written statement

by the respondent, he immediately swung into action and filed the application seeking amendment of the plaint to assail the judgment and decree set up by the respondent. It is further submitted that the proposed amendment is necessary for complete and effective adjudication of the controversy, therefore, the learned trial Court has committed a gross error in dismissing the application.

Counsel for the respondent has supported the impugned order with the submissions that the petitioner was aware of the judgment and decree but he did not challenge the same as he knew that his suit filed in the year 2009 would be barred by limitation to assail the judgment and decree passed in the year 1986. It is further submitted that the present application is a clear device to save the petitioner from his obligation to prove the plea of limitation.

I have heard counsel for the parties and perused the records.

The learned trial Court has rejected prayer of the petitioner on the basis of a presumption that the petitioner already had knowledge of the judgment and decree, when otherwise there is nothing on record suggestive of that fact, at this stage. Even otherwise, if the application for amendment is allowed, the petitioner cannot escape his legal obligation to prove that challenge to the judgment and decree is within limitation as the onus to prove issue of limitation always rests upon the plaintiff. The proposed amendment being necessary for complete and effective adjudication of contesting claims of the parties in the suit property, the application is allowed with liberty to the respondent to raise all available plea(s) by filing response to the amended plaint.

In view of what has been discussed hereinabove, the petition is
allowed in the aforesaid terms.

(Rekha Mittal)
Judge

12.02.2016
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