

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

RSA No.128 of 2010

Date of decision : 10.03.2016

Sukhdev Singh

...Appellant

Versus

Gurdeep Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. C.B. Goel, Advocate for the appellant.

Mr. Harkesh Manuja, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration setting aside the judgment and decree dated 20.09.1993 on the ground that fraud and misrepresentation has been played upon him with consequential relief of injunction.

Mr. C.B. Goel, learned counsel appearing on behalf of plaintiff submits that in the earlier instituted suit, next date was 10.09.1993 whereas application dated 27.08.1993 was filed at the instance of the counsel representing the plaintiff. On the basis of that, the trial Court passed the judgment and decree dated 20.09.1993. On acquiring the knowledge of the same, suit was filed on 19.11.1999. It is a categorical case of the plaintiff that he was never served in the previous suit whereas the written statement was filed at the behest of the counsel. No separate statement of the plaintiff was

ever recorded. Both the Courts below have thus committed illegality and perversity in not noticing the aforementioned fact and accordingly dismissed the suit and urges this Court to formulate substantial question of law. In support of his contention, he has relied upon judgment rendered by Hon'ble Supreme Court of India in *Badami (d) by LRs Vs. Bhali, 2012(11) SCC 574*.

Mr. Harkesh Manuja, learned counsel appearing on behalf of respondent submits that suit ex facie was time barred and this fact, in paragraph No.18, has been noticed by the lower Appellate Court as the suit was filed in 1999 whereas limitation as per Article 58 is three years. Judgment of the trial Court merges with the lower Appellate Court. Even otherwise, as per the provision of Section 3 of Indian Limitation Act, such plea can be taken at any stage and thus urges this Court for dismissal of the appeal. He further submits that once the property is self-acquired, there is no need for any family arrangement

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal, for, six years, appellant remained silent whereas it has come on record that mutation had been sanctioned, much less, khasra girdwari were already corrected. The appellant-plaintiff also remained Sarpanch. No criminal complaint or FIR has ever been lodged. Both the Courts below discarded the statement of expert as specimen signatures were not taken in the presence of the expert. Ex.D8 an application submitted on behalf of plaintiff, for decree of the suit resulted into passing of judgment and decree dated 20.9.1993. Decree reveals that the appellant appeared through counsel. No explanation has

come forth in challenging the decree for a period of six years. Article 58 of the Limitation Act, cannot be ignored as it does give the right to the party to file the suit by making averments that he recently came to know about the passing of the decree. Such vague averment cannot be looked into for the purpose of bringing the suit within the period of limitation. Even otherwise, appellant-plaintiff failed to prove the ingredients of Order 6 Rule 4. In this regard, judgment rendered by Hon'ble Supreme Court in *Ram Chandra Singh Vs. Savitri Devi and ors. 2003(3) Civil Court Cases 678 (S.C.)* supports the case of the respondent-defendant wherein the plaintiff had failed to prove the ingredients of fraud. Except self-serving statement of the plaintiff, no evidence has been led on record. Even the file pertaining to the previous suit resulting into the passing of the judgment was not summoned to show and prove whether the appellant-plaintiff and defendant in the said suit was ever served or not. In the absence of the same, I am of the view that appellant-plaintiff has miserably failed to prove the ingredients of Order 6 Rule 4, much less, discharge the onus as per Section 101 of the Indian Evidence Act. Once the plaintiff had lost the right to challenge the decree within a period of limitation, plea of registration of the consent decree would be immaterial.

In view of what has been noticed above, no ground is made out for interference, much less, no substantial question of law arises for determination.

Appeal is dismissed.

10.03.2016

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**(AMIT RAWAL)
JUDGE**