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

Date of decision : 06.12.2016

1.

RSA-3690-2011 (O&M)

Amarjit and another

... Appellants

Versus

Maya Devi and others

... Respondents

2.

XOBS-30-C-2012

Amarjit and another

... Appellants

Versus

Maya Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. V.K. Jindal, Senior Advocate with
Ms. Janya Sirohi, Advocate
for the objector/respondent Nos.1 to 8 & 9A & 10.

AMIT RAWAL, J. (ORAL)

CM-13115-C-2012 IN XOBS-30-C-2012

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the delay of 265 days in filing the cross-objections is condoned.

CM stands disposed of.

CM-13116-C-2012 IN XOBS-30-C-2012

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the delay of 28 days in re-filing the cross-objections is condoned.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of the appeal bearing **RSA No.3690 of 2011** titled as **“Amarjit and another V/s Maya Devi and others”** and cross-objections bearing **XOBS No.30-C of 2012** titled as **“Amarjit and another V/s Maya Devi and others”** at the instance of the defendant(s) against the findings rendered by the lower Appellate Court in paragraph 17.

The appellant(s)-plaintiff(s) is being represented by Mr. Sanjiv Gupta, whereas the cross-objector(s)/defendant(s) by Mr. V.K. Jindal, learned Senior Counsel assisted by Ms. Janya Sirohi.

The controversy involved in this case is arisen out of the judgment and decree dated 11.07.1972 in a Civil Suit bearing No.607 of 1972 titled as **“Baljeet Singh and others V/s Bachna Ram & Rachna Ram sons of Sharda Ram”**, whereby the land, in dispute, allegedly had been given to the plaintiff(s) herein. The appellant(s)-plaintiff(s) filed the civil suit in the year 2001 challenging the judgment and decree on the premise that a fraud and misrepresentation had been played upon Bachna Ram, their father as Bachna Ram and Rachna Ram had a share-holding to the extent half share in the total land measuring 95 kanals.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the appellant(s)-plaintiff(s) submits that on going through the contents of para No.2 of the plaint (Ex.P-1), it is Bachna Ram, who had no objection qua transferring of the share of Rachna Ram in favour of the plaintiff(s) therein, who are none-else, but the sons of Rachna Ram. Though the trial Court

dismissed the suit, but the lower Appellate Court gave the finding in their favour, but dismissed the suit on the ground of limitation as there is no limitation for asserting right on the basis of the title. In support of his contentions, he relies upon the *ratio decidendi* culled out by the judgment rendered in **“Manti and others V/s Sarswati Devi and other”, 2003 (4) RCR (Civil) 677.**

He further submits that the copy of the plaint, order passed thereon, had been produced on record, but the Courts below non-suited the plaintiff(s) by taking the aid of the provisions of Articles 58 and 59 of the Limitation Act. The jambandi for the year 1970-71 and 1995-96 showed the joint 'khata' and therefore, the plaintiff(s) were not aware of the aforementioned decree, whereas the suit was filed in the year 2001 and thus, the findings rendered by both the Courts below particularly the lower Appellate Court qua limitation despite giving the certain finding in favour of the appellant(s)-plaintiff(s) qua limitation, are liable to be set aside.

He further submits that there is no limitation when the decree is vitiated from the fraud and misrepresentation. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Santosh V/s Jagat Ram and another” 2010 (2) RCR (Civil) 206** and on similar lines rendered by this Court in **“Avtar Singh and others V/s Surjit Kaur and others” 2010 (8) RCR (Civil) 718.** The consent decree required registration and therefore, was hit by the provisions of Section 17 of the Registration Act. In support of his contentions, also rely upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Phool Patti and another V/s Ram Singh (dead) through LRs and another” 2015 (1) RCR**

(Civil) 606.

Per contra, Mr. V.K. Jindal, learned Senior Counsel assisted by Ms. Janya Sirohi, learned counsel appearing on behalf of the cross-objector(s)-defendant(s) submits that on perusal of Ex.D1 and Ex.D-2, Bachna Ram had taken the loan in respect of other piece of land and even the mutation qua decree was reflected in favour of the respondent(s)-defendant(s), who were the plaintiff(s) in the earlier instituted suit. All the khasra girdawaris and jamabandis reflect the same. This fact was in the knowledge of the appellant(s)-plaintiff(s), but having failed to avail the remedy within the prescribed period, the suit had rightly been held to be barred by law of limitation. Though the mutation does not confer the right, but whenever, there is a cloud on title or threat of dispossession, cause of action would arise and reckoning date would be the one, in case of either of the situation has arisen. In support of his aforementioned contentions, he relies upon the judgment of the Hon'ble Supreme Court in “Shyam Lal @ Kuldeep V/s Sanjeev Kumar and others” 2010 (8) RCR (Civil) 2798 and as well as the judgment of this Court rendered in RSA No.1684 of 2011 titled as “Raj Pal Singh and others V/s Smt. Chameli” decided on 22.09.2016.

He further submits that the remedy for the appellant(s)-plaintiff(s) was to approach the same very Court by moving an application in view of the provisions of Order 23 Rule 3-A of the Code of Civil Procedure which came to be debated/pondered upon by the Hon'ble Supreme Court in “Daljit Kaur and others V/s Muktar Steels Pvt. Ltd. and another” 2014 (1) RCR (Civil) 625. In the aforementioned judgment, the Hon'ble Supreme Court had an occasion to equate decree obtained by

consent as well as on the compromise on the same platform, thus, the independent suit was not maintainable and urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and as well as gone to the record of the Courts below and of the view that there is no merit and force in the submissions of Mr. Sanjiv Gupta. The limitation to challenge the judgment and decree rendered by the Courts below is provided under Article 59 of the Limitation Act i.e. 3 years from the date first became known to the person. Ex.D-1 & Ex.D-2 are the documents of loan having been obtained by Bachna Ram after passing of the judgment and decree and the documents are of November 1980. Mutation was sanctioned way back in the year 1975. No doubt the mutation would not give the cause of action to the appellant(s)-plaintiff(s) to institute the suit, but the subsequent jamabandis i.e. Ex.D-9 to Ex.D-16 would reflect the change in the column of ownership and possession in the letter and spirit of the judgment and decree under challenge. The fact was in the knowledge of the appellant(s)-plaintiff(s), therefore, the title was under cloud, much less, possession was of the defendant(s) in view of the khasra girdawari brought on record. Having failed to take appropriate remedy in accordance with law and kept silent for a period of almost 29 years, in my view, the suit was hopelessly barred by law of limitation. I cannot remain unmindful of the fact that Bachna Ram, who had allegedly suffered a decree, died in 1996 and during his lifetime, did not challenge the impugned judgment and decree. He was the best person to come forward and to oppose or defend the decree. Even the copy of the written statement stated

to have been filed by Bachna Ram and Rachna Ram in the earlier instituted suit, as noticed by the Courts below in the order dated 11.07.1972 did not see the light of the day, perhaps the plaintiff(s) were afraid of the truth having not been surfaced. For the sake of brevity, the order dated 11.07.1972 passed by the trial Court noticing the filing of the written statement reads thus:-

“The defendants in this suit have filed a written statement admitting all the pleas raised by the plaintiffs in their plaint and have also made a statement in the Court on oath to that effect. Under the circumstances, no issue arises between the parties. The suit of the plaintiffs is accordingly decree as prayed. The parties are however left to bear their own costs.”

The argument of Mr. Sanjiv Gupta, in the first blush, on going through the contents of para 2, looks to be attractive, but the aforementioned order totally demolishes his apprehension/stand as expression used is defendants not the defendant, thus, it cannot be overruled that Bachna Ram was not impleaded party and inserting of his name was an afterthought. The written statement should have been brought on record to substantiate the claim of fraud and misrepresentation. In my view the appellant(s)-plaintiff(s) failed to lead any evidence in terms of the provisions of Order 6 Rule 4 of the Code of Civil Procedure. The findings of the trial Court with regard to the interpretation of Para 2 of the earlier instituted suit are, thus, wholly erroneous as having not taken the notice of the order reproduced (supra) and accordingly, the findings are hereby held to be *obiter*. As regards the concurrent findings rendered by both the Courts below qua the limitation, I do not intend to differ with the same.

The *ratio decidendi* culled out by the judgments cited by Mr. V.K. Jindal, squarely applies to the facts and circumstances of the case.

There is no dispute to the *ratio decidendi* culled out by the judgments cited by Mr. Sanjiv Gupta i.e. Santosh's case (supra) and Avtar Singh's case (supra) with regard to the filing of the suit when the fraud is established. Since, I already observed that the appellant(s)-plaintiff(s) have failed to establish the fraud, therefore, the aforementioned *ratio decidendi* would not apply.

For the foregoing reasons, no ground is made out for interference in the findings rendered by the Court below qua suit having been barred by law of limitation and the same are hereby upheld.

As regard the cross-objections, the cross-objectors are aggrieved of the findings rendered by the lower Appellate Court with regard to the mutation bearing No.1579 recorded on the basis of the decree dated 11.07.1972, but the fact remains that once I already upheld the decree, the findings rendered by the lower Appellate Court qua mutation which does not confer the title, would be rendered as *otiose*.

With the aforesaid observations, the appeal bearing RSA No.3690 of 2011 is dismissed and cross-objections bearing XOBS No.30-C of 2012 are allowed.

06.12.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No