

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

RSA No.1707 of 2016 (O&M)

Date of Decision.01.08.2016

Rachna and others

.....Appellants

Vs.

Ram Sarup (deceased) through LRs and others

.....Respondents

Present: Mr. Rajesh Arora, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J. (ORAL)

C.M. No.4671-C of 2016

For the reasons stated in the application, delay of 184 days in refiling the appeal is condoned.

Application is allowed.

RSA No.1707 of 2016

The appellants-plaintiffs are aggrieved of the judgments and decrees of the Courts below whereby the civil suit for setting aside the attachment and sale and sale certificate dated 17.05.1941 and mutation No.304 dated 18.11.1941 had been dismissed.

Mr. Rajesh Arora, learned counsel appearing for the appellants-plaintiffs submits that judgment and decree dated 26.10.1933 was passed against Santu and not against Fatta and Chitru as they were discharged being minors at that time. Despite the aforesaid discharge, the plaintiffs

therein, had sought the execution of the judgment and decree by taking into

consideration the aforementioned judgment and decree dated 26.10.1933 against Fatta and Chitru.

He further submits that the trial Court framed all the issues but rendered finding only on the issue of limitation and thus, there is gross illegality and perversity. In fact, it tantamounts to ignoring the other issues and treating the issue of limitation as preliminary issue. In support of his contention, he relies upon the judgment of the Hon'ble Supreme Court in *Satti Paradesi Samadhi and Philliar Temple VS. M. Sankuntala (D) through LRs and others 2015(5) SCC 674* and thus, urges this Court that the matter requires to be remanded back with direction to the trial Court to decide all the issues on merits by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellants-plaintiffs and appraised the paper book. Nothing has surfaced on record as to when Chitru and Fatta (since deceased) obtained majority and that they were not aware of the aforementioned judgment and decree. In fact, both the aforementioned persons after attaining the majority had the right to challenge the judgment and decree dated 26.10.1933. The suit was instituted at the behest of successor-in-interest of aforementioned persons i.e. Chitru and Fatta in the year 2006. No explanation has come forth to bring the suit within the provisions of Article 56 of the Limitation Act. The judgment and decree dated 26.10.1933 was satisfied long time back. There is gross delay of more than 75 years which has gone unexplained. Therefore, it would have been farcical exercise for the Courts to address all the issues on merits when there is unexplained delay of more than 75 years.

The *ratio decidendi* culled out in the *Satti Paradesi Samadhi*

and Philliar Temple's case (supra) does not apply to the present case as in the instant case sets of facts are different in nature than what was dealt with by the Hon'ble Supreme Court in the case referred to above.

In view of the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based on correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 01, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No