

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

RSA No.1970 of 2016 (O&M)

Date of decision : 08.08.2016

Krishan Kumar Rao and others

...Appellants

Versus

Hemant Kumar @ Sanjay Kumar and others

...Respondents

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. Mani Ram Verma, Advocate for the appellants.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the dismissal of the suit seeking declaration that the plaintiffs and proforma defendants are owner in equal share of house No.543, Ward No.10, Darjiyo Wali Gali, Jind, by challenging the decree passed in Civil Suit No.435 instituted on 26.07.1995 decided on 10.10.1995 titled as Hemant Vs. Shanti Devi, being illegal, being null and void, has been dismissed.

Mr. Mani Ram Verma, learned counsel appearing on behalf of appellant-plaintiffs submits that as per the Pedigree table reflected in the judgment and decree of the trial Court, Johri Lal had three children namely Shanti, Rao Kapoor Chand and Har Gulal. Shanti and Har Gulal died

issueless. Rao Kapoor Chand had two sons namely Gian Chand and Om Parkash. Plaintiffs are descendants of Om Parkash, whereas defendants are descendants of Gian Chand. The decree executed in the year 1995 by Shanti though was with regard to her own exclusive share being absolute owner but the fact remains that decree was kept secret till her demise i.e. till 2006. On coming to know the aforementioned, suit was also filed on 17.04.2006, therefore, it would not have said that it was barred by law of limitation as per Article 59 of the Indian Limitation Act. There was no family settlement as alleged in the decree. The decree do not contain the dimension of the suit property, therefore, is illegal and void which was based on the premise that Hemant serving Shanti Devi. Had the decree not been there, the plaintiff would have also succeeded to the estate of Shanti in equal share. All these aspects have not been noticed by both the Courts below, thus, there is illegality and perversity and urges this Court for setting aside of the same and formulation of the substantial questions of law as culled out in the grounds of appeal.

I have heard learned counsel for the appellants-plaintiffs and appraised the paper book.

It is conceded position on record that after suffering of the decree dated 10.10.1995 in the suit aforementioned, Shanti remained alive till 2006. During her lifetime, she did not challenge the decree. She was exclusive and absolute owner of the share and could have given to any one during her lifetime i.e. by bequeathing the will or otherwise. The plaintiffs i.e. descendants of Om Parkash son of Rao Kapoor Chand, in my view do not have right and claim as it was a wish of Shanti Devi to bequeath her

share in favour of Gian Chand. No explanation has come forth in filing the suit in 2006. Limitation is three years on acquiring the knowledge but the fact remains that Shanti Devi once did not challenge the same, and therefore, the collateral cannot have any grievance after her demise. I am of the view both the Courts below after examining aforementioned facts and as well as evidence brought on record, much less, law rightly rejected the claim in the suit.

No ground for interference is made out.

Dismissed.

08.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No