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

**RSA No.3176 of 2016 (O&M)
Date of decision:28.07.2016**

Veena Kumari ... Appellant

Vs.

Kharaiti Lal and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Aggarwal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration and consequential relief of injunction challenging the judgment and decree dated 22.09.1988, whereby, she allegedly bequeathed 1/3rd share in favour of defendants No.1 and 2.

Mr. S.K.Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff submits that Ladha Ram was owner of the suit land and died intestate in the year 1968 and therefore, the entire property measuring 138 kanals 12 marlas was inherited by his legal heirs in equal shares. The alleged judgment and decree dated 22.09.1988 passed in Civil Suit No.637 of 1988 was an outcome of fraud and mis-representation on having acquired the knowledge about the factum of transfer of land, the suit was filed by invoking the provisions of Article 56 of the Limitation Act. Though the trial Court decreed the suit but the Lower Appellate Court has erroneously and perversely dismissed the same on the ground that ingredients of fraud and mis-representation have not been proved, much less, suit was beyond the limitation. He further submits that one of brothers had rather proved the case of the plaintiff that there was no judgment and decree. As per the language of Article 56 of the Limitation Act, limitation would start from the date of the knowledge of fraud and therefore, the suit instituted in the year 2009 cannot be said to be beyond limitation and thus, prays for setting aside of the judgment and decree rendered by the Lower Appellate Court.

I have heard learned counsel for the appellant and appraised the judgment and decrees of the Courts below.

It would be apt to reproduce Article 56 of the Limitation Act which read thus:-

Article 56

To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff

No doubt, limitation to seek declaration of instrument is three years but the averments made in the plaint have to be supported by some documents. For the sake of brevity, paragraph 3 of the plaint reads thus:-

"That now about two months ago, the defendants stated that they have succeeded in getting the share of plaintiff transferred in their favour by virtue of civil court decree passed in suit no.637 of 1988 decided on 22.9.1988 by the Court of Sh. Virender Singh the then Senior Sub Judge Rohtak. After that the plaintiff obtained certified copies of decree and other

revenue record and came to know about passing of impugned judgment and decree and change of subsequent revenue record in the name of defendants. The impugned judgment and decree dated 22.9.1988 and subsequent mutation, and revenue record in favour of defendants are null and void, illegal, fraudulent and the plaintiff is not bound by the same on the followign grounds:-

i) That the defendants have succeeded in obtaining t he alleged decree by way of playing fraud. The alleged decree is the result of mis-representation/impersonation. The plaintiff neither engaged any counsel nor made any statement in the Court admitting the alleged claim of present defendants. The alleged written statement is not bearing the signature of plaiintiff. When the plaintiff did not appear in the Court, some other person must have appeared.

ii) That the story of alleged family settlement referred to in that plaint is also false. No family settlement has ever taken place. Had the alleged family settlement taken place, the plaintiff would have been party to the same and some thing would have also been given to her. In this way, the story of alleged family settlement is concoted.

iii) That in para no.3 of the plaint of that suit, it is mentioned that there was quarrel with regard to ownership and possession. When there was quarrel, there was no question of *giving the suit land to the defendants. The possession of the suit land was never delivered to the defendants.*

iv) That no immovable property of the value of more than ₹100/- can be transferred without registered document. The decree is not registered.

v) That no summons or court notice was ever served upon the plaintiff."

In the plaint, the plaintiff pleaded that she came to know about transfer of the land in the year 2000 and filed the suit. No doucmentary evidence with regard to alleged transfer has been placed on record, whereas, on the contrary, the mutation brought on record reveals that property after the judgment and decree was mutated in the year 1988. It is very easy for the litigant to bring the suit within a period of limitation by taking the aid of Article 56 of the Limitation Act, but the Court cannot remain oblivious of the fact that averments made in the suit have to be proved by leading direct and cogent evidence and not by mere bald assertion.

I am of the view that the Lower Appellate Court has righty dismissed the suit by holding that it is barred by law of limitation.

No ground is made out for interference in the findings rendered by the Lower Appellate Court which are based upon the apprecication of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 28, 2016
savita

Wheather speaking/reasoned Yes/No

Whether Reportable Yes/No