

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

**RSA No.4135 of 2016 (O&M)
Date of decision:16.08.2016**

Ramesh Kumar and another

... Appellants

Vs.

Satnarian (since deceased) through LRs and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kulvir Narwal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

Appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, suit of the respondent-plaintiff seeking declaration of the judgment and decree dated 08.04.1994, has been set aside and they have been restrained from dispossessing the plaintiff from the joint possession of the suit land.

Mr. Kulvir Narwal, learned counsel appearing on behalf of the appellant-defendants submits that Article 58 of Limitation Act would apply as the suit had been filed on 04.04.2008 challenging the aforementioned judgment and decree. No explanation of delay has been explained. The application seeking mutation of the property on the basis of the sale deed executed by defendant No.1 in favour of the plaintiff, was also rejected and thus, he had knowledge and cause of action arose to challenge the same, therefore, applicability of provisions of Article 59 of Limitation Act, would

not arise. The plaintiff had not sought the relief yet he had been accorded the status of co-owner and therefore, both the Courts below have not noticed the aforementioned facts, thus, there is illegality and perversity in the judgments and decrees.

I have heard learned counsel for the appellant-defendants and appraised the judgments and decrees of the Courts below.

Article 58 of the Limitation Act came to be debated upon by the Hon'ble Division Bench of this Court in **Ibrahim alias Dharam Vir vs. Smt. Sharifan alias Shanti 1979 PLJ 469** by holding therein that whether mere entry of mutation in the name of defendant would furnish a cause of action to plaintiff to file a suit for declaration or not and plaintiff continued to be in possession of property even after sanction of mutation in the name of defendant. No cloud cast on title of plaintiff by mere entry of mutation in the name of defendant. The cause of action arose to plaintiff when defendant actually threatened to take forcible possession of land from plaintiff. The instant case is a case of such kind where the plaintiff had sought to invoke the provisions of Article 59 of Limitation Act and decree is sought to be cancelled or set aside, when known to him.

It is conceded position on record that Jhoothar-defendant No.1, who intentionally was proceeded ex parte before the Court below, the father of the appellant/defendants No.2 and 3, had agreed to sell the land to plaintiff, vide sale deed dated 03.11.1993. In the meantime, the alleged judgment and decree dated 08.04.1994 in respect of same very piece of land

Accordingly, the appeal stands dismissed.

Yes/No