

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

**RSA No.528 of 2016 (O&M)
Date of decision:03.08.2016**

Smt. Phullan (deceased) through LR ... Appellant

Vs.

Smt. Bharpai and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arihant Jain, Advocate and
Mr. Varun Jain, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit claiming declaration by setting aside the judgment and decree dated 12.06.1989 passed in civil suit no.517 dated 12.06.1989 titled as “Chandgi vs. Smt. Phullan etc.” and as well as, for possession, has been dismissed.

Mr.Arihant Jain, learned counsel appearing on behalf of the appellant-plaintiff submits that a fraud and misrepresentation had been played upon the appellant as Chandgi had instituted a suit but on the same date got affixed the thumb impressions on blank papers for filing written statement and obtained the decree which is under challenge. The factum of the aforementioned decree surfaced when the plaintiff had approached the defendants for claiming rent in the month of January 2009 and thereafter, suit was filed on 26.03.2009 by bringing the suit within the provisions of

Article 56 of the Limitation Act. Other than the plaintiff, handwriting expert has been examined, who deposed that it was not thumb impression of the appellant but the trial Court and the Lower Appellate Court have committed illegality and perversity in dismissing the suit on the ground that decree did not require the registration as there was already an arrangement in the family, whereas, decree requires registration and decree was not on the basis of the compromise or comprising of other than which was subject matter of that exception of Section 17(2)(vi) of the Registration Act and thus, urges this Court for setting aside of the impugned judgments and decrees of the Courts below. He further submits that the counsel for the respondent-defendants, who had represented them as plaintiffs in the aforementioned suit, appeared and stated that he recognized the plaintiffs. It is strange that counsel of the opposite party recognized the defendants in the earlier round of litigation.

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

Article 56 of the Limitation Act provides that to declare the forgery of instrument, issue or registered is 3 years for challenging the instrument when the issue becomes known to the plaintiff. It is now common practice of the persons to bring the suit within period of limitation by stating that few days prior before filing the suit acquired the knowledge of the aforementioned appeal. In my view, appellant has failed to prove the ingredients of Order 6 Rule 4 of Code of Civil Procedure, much less, the suit within a period of limitation. The assertion qua obtaining of Chakota

also surfaced which gave cause to filing of suit in the year 2009 as it has not been explained as to how Chakota for the previous period was paid or not. There is no pleading, much less, evidence in this regard and therefore, in my view, both the Courts below have rightly interfered in the case as the plaintiff has miserably failed to prove misrepresentation and forgery.

There is another aspect of the matter. In the statement suffered by Phullan, it has not been explained in what circumstances, she appeared before the Court below and reiterated the averments made in the plaint.

As regards, the registration of decree, there is a categoric averment in paragraph 3 of the previous suit resulting into passing of the decree. It is a settled law that if a right had already been accrued before filing of the suit, it would not tantamount to creating right for the purpose of time requiring the decree to be registered in law. This aspect has been taken care of by the Courts below.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 03, 2016
savita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No