

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

RSA No.6383 of 2014 (O&M)

Date of decision:08.08.2016

Ratna (since deceased) through LRs ... Appellants

Vs.

Dharam Pal and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Mamli, Advocate
for the appellant(s)

AMIT RAWAL J.

Appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, claim in the suit seeking declaration by challenging the judgment and decree passed in civil suit no.188 of 1992, decided on 29.07.1992 and the subsequent mutation bearing No.8356, has been declined.

Mr.R.S.Mamli, learned counsel appearing on behalf of the appellant-plaintiff submits that a fraud and misrepresentation had been played upon the appellant with regard to the aforementioned decree and on realizing the aforesaid fact, particularly when approached the Patwari, the mutation came to the knowledge and accordingly, the suit was filed within a period of limitation on 24.12.2002. He further submits that there was no family arrangement between the parties. The defendants (in the aforementioned suit and herein also) were not the members of the family. The defendants had no pre-existing right, therefore, no decree could have been passed in their favour. The aforementioned decree required registration, in view of the ratio decidendi culled out by this Court in **Smt.**

Sukhdevi vs. Smt. Ram Piari 2014(1) ICC 1009. He further submits that in view of the right having been accrued for the first time, the aforementioned decree was not valid in law for want of registration. The suit could not be thrown out for want of limitation, for, as per Article 59 of the Limitation Act, the period to challenge a decree obtained by fraud is three years. There is a categoric pleading in the plaint regarding the aforementioned fact and thus, urges this Court for setting aside the judgments and decrees under challenge.

In support of his aforementioned contention, he relies upon the judgments rendered by this Court in **Bhagmal vs. Surji alias Surji Kaur and others 2011 (1) CivCC 542; Smt. Kamla Devi vs. Smt. Gainda Devi and others 2008 (62) AIC 636; Dasa Singh and another vs. Jasmer Singh 2003(2) R.C.R. (Civil) 361 and Ranji Bajaj and others vs. Ram Piari 2006(1) R.C.R. (Civil) 153.**

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Mamli, for, it is a common practice of the litigants to file a suit as and when they desire by making averments in the suit that they acquired the knowledge few days before filing of the suit, therefore, in order to wriggle out of the rigors of Article 59 of the Limitation Act, but the fact remains that throughout all this period what the plaintiff has been doing is not either explained or pleaded, much less, proved. The instant case is of such kind where the plaintiff has miserably failed to prove the factum of the aforementioned decree and mutation. The mutation is a revenue entry which carries presumption of

truth as per Section 44 of the Punjab Land Revenue Act, until and unless the same is rebutted. The plaintiff has also miserably failed to explain having acquired the knowledge of decree in the year 2007 before filing the suit. Even otherwise, for challenging the decree, the period is three years

It is a matter of record that plaintiff appeared in the aforementioned suit and suffered a statement also. The ingredients of Order 6 Rule 4 of Code of Civil Procedure with regard to fraud and misrepresentation are also conspicuously wanting. The bald statement of appellant that she visited the office of Halqa Patwari and acquired the knowledge of mutation would not extend the period of limitation, much less, bring the suit within the prescribed period.

There is no dispute with regard to the ratio decidendi culled out in the aforementioned judgment cited (supra) but in the absence of the evidence, the same would not come to the aid/rescue of the appellant. Even the factum of family settlement had been admitted by the appellant and therefore, irresistibly concluded that right was not created for the first time. The family settlement had been admitted by the plaintiff in the written statement in civil suit no.188 of 1992 and therefore, the presumption drawn is that right was not created for the first time, thus, the decree did not require any registration.

For the foregoing reasons, I do not find any illegality and perversity in 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 adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 08, 2016
savita

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