

**RA-RS-56-C-2017 (O&M) in
RSA No.3162 of 2008**

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

**RA-RS-56-C-2017 (O&M) in
RSA No.3162 of 2008
Date of decision:27.10.2017**

Timber Association Pathankot

... Applicant/Appellant

Vs.

Kuldev Singh @ Kuldip Singh deceased through LRs and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V.K.Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate
for the applicant/appellant.

AMIT RAWAL J.

C.M.No.6576-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 06 days in filing the review application, is condoned.

C.M. stands disposed of.

C.M.No.6577-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 499 days in re-filing the review application, is condoned.

C.M. stands disposed of.

RA-RS-56-C-2017

The applicant/appellant has preferred the review petition seeking review of the order dated 01.12.2015, whereby, the Regular Second Appeal filed on behalf of the applicant/appellant/defendant, has been dismissed.

Mr.Vijay Kumar Jindal, learned Senior Counsel assisted by Mr. Gopal Soni, Advocate appearing on behalf of the applicant/appellant in support of his arguments has raised an argument that the suit preferred by respondent No.1-plaintiff seeking possession of 516 kanals 1 marla of land out of 1236 kanals 7 marlas of land prescribed in the jamabandi of the year 1961-62 as described in the head note of the plaint, was *ex facie* barred by law of limitation as in order to bring the suit within a period of limitation, Attorney of the plaintiff - Smt. Shakuntla w/o Kuldev Singh appeared in the witness box and stated on oath that plaintiff-Kuldev Singh @ Kuldip Singh was born on 20.11.1945 at village Dhakki, Tehsil Pathankot, whereas, suit was filed on 13.12.1963, therefore, he had attained the majority much earlier. The birth certificate, Ex.P1 had not been proved on record as no witness from the concerned department to this effect had been examined. On the basis of the aforesaid finding, the trial Court dismissed the suit on issue No.2, framed on the point of limitation.

However, in appeal an additional evidence was placed on record, i.e., two sale deeds dated 14.03.1961 (Ex.PW5/A) and 13.06.1962 (Ex.PW6/A) executed by Smt. Durga Devi-mother of the appellant, wherein,

he was stated as minor but the witnesses of both the sale deeds have not been examined, therefore, the documents remained un-proved. In the absence of the same, suit could not have been filed within a period of limitation on the date of attaining the age of majority, therefore, the suit was liable to be dismissed. All these points lead to irresistible conclusion that suit was barred by law of limitation, therefore, there is an error apparent on record.

I have heard counsel for the parties and appraised the paper book.

The law on the scope and grounds for review is no longer *res integra*, in view of the decision rendered by the Hon'ble Supreme Court in **Tamilnadu Terminated Full Time Temporary LIC Employees Association vs. S.K.Roy, The Chairman, Life Insurance Corporation of India and another 2016(9) SCC 366**, wherein, it has been held that review is not re-hearing of the matter. Power of review cannot be confused with the appellate power which enables a superior Court to correct all errors committed by a subordinate Court. Mere repetition of same arguments urged in the appeal and have been rejected, could not be a sufficient ground to justify the exercise of review. All these aforesaid points have been dealt with by the Additional District Judge, Gurdaspur while reversing the judgment of the trial Court in decreeing the suit. Even otherwise, the sale deeds are the public documents lying in the office record of the Registrar. Until and unless the same are not rebutted, it would not lie in the mouth of

the applicant/appellant to take a plea of mode of proof. Nothing prevented the applicant/appellant to lead evidence contrary to what has been observed by way of additional evidence. Even order of the lower Appellate Court allowing the additional evidence has not been assailed by taking recourse to the provisions of Order 43 Rule 1A of the Code of Civil Procedure. All these points were required to be addressed at the time of the appeal but not under the garb of review. Such an exercise, in my view, would tantamount to re-agitating the matter which is not permissible.

In view of the aforementioned observations, I do not find any error apparent on the face of record, much less no ground is made out for interference in the order sought to be reviewed.

Resultantly, the review application is dismissed.

(AMIT RAWAL)
JUDGE

October 27, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No