

239

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

**Civil Revision No.627 of 2017 (O&M)
Date of Decision: 15.11.2018**

DARSHAN SINGH

.....Petitioner

Vs

AJIT SINGH & ORS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Satbir Rathore, Advocate
for the petitioner.

Mr. Vijay Rana, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. At the very outset, learned counsel for the petitioner submitted that respondent No.1 is only contesting respondent and service *qua* other respondents be dispensed with as they were already proceeded against *ex parte* before the trial Court.

Ordered accordingly.

[2]. Petitioner has assailed the order dated 26.09.2016 passed by the Civil Judge (Jr. Divn.) Mukerian vide which suit filed by the petitioner was dismissed with costs.

[3]. This case was remanded by the High Court vide order dated 19.02.2010 thereby directing the trial Court to decide the

case strictly in terms of Section 6 of the Specific Relief Act. When the case was remanded by the High Court to the trial Court, the record was not received by the trial Court. On enquiry it was found that the record had already been burnt in the fire incident in the High Court. File was ordered to be reconstructed by the trial Court. Learned counsel for the parties produced only the judgment dated 31.12.1988 passed by the Addl. Senior Sub Judge Dasuya, copy of the plaint, copy of written statement and copy of order dated 19.02.2010 passed by the High Court. Except the aforesaid documents, there were no documents available on record.

[4]. Vide order dated 16.02.2016, the High Court had granted liberty to both the parties to lead fresh evidence in accordance with law. After the remand, only defendant No.1 contested the suit. Defendants No.2 to 6 did not appear before the trial Court and they were proceeded against *ex parte*.

[5]. Learned counsel for the petitioner submitted that earlier one Chanan Singh and others filed a suit for possession against the respondent Darshan Singh which was decided by the trial Court on 16.10.1977 in favour of the petitioner therein. However, in the appeal filed by Darshan Singh before the lower Appellate Court, the same was allowed and suit filed by Chanan Singh was ultimately dismissed vide judgment and decree dated

21.02.1979.

[6]. Learned counsel further submitted that the defendants dispossessed the petitioner on 08.03.1987 and the present suit came to be filed on 18.09.1987 as per endorsement made at the top of the judgment dated 26.09.2016 passed by the Civil Judge (Jr. Divn.) Mukerian.

[7]. Learned counsel further submitted that in the earlier litigation, limitation was not set up as a ground for dismissal of the suit.

[8]. As against this, learned counsel for respondent No.1 vehemently submitted that the decree passed by the lower Appellate Court in Civil Appeal No.272/77 titled '*Darshan Singh vs Chanan Singh and others*' gave different configuration in terms of boundaries of the suit property and the same was related to 1 Kanal of land. The present suit was filed in respect of 16 Marlas of land and the dimensions remained altogether different. Even during course of proceedings, the plaintiff confined his entitlement to the extent of 7½ Marlas of land.

[9]. Learned counsel further submitted that plea of limitation even if not set up as a defence in the written statement would obligate the Court in terms of Section 3 of the Limitation Act to take cognizance. It is an onerous duty of the Court to see whether the suit is within limitation or not?

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. After remand of the case, the suit has to be decided on merits afresh. Evidently, the alleged dispossession of the plaintiff was on 08.03.1987 and the suit itself came to be filed on 18.09.1987 i.e. beyond a period of six months as prescribed under Section 6 of the Limitation Act. Even as per remand, the High Court has specifically directed the trial Court to decide the suit strictly in terms of Section 6 of the Specific Relief Act.

[12]. The findings recorded by the trial Court in the context of different property being involved in the suit filed by Chanan Singh viz.-a-viz. present suit could not be differentiated by the petitioner with reference to any cogent evidence, rather the relinquishment *qua* remaining land except 7½ marlas of land during course of proceedings of the suit would also negate the theory as propounded by the plaintiff/petitioner. In the present suit, the plaintiff has staked his claim to 16 Marlas of land instead of 7½ Marlas of land from which he was allegedly disposed. After exahusting one round of litigation, the petitioner was not sure about his entitlement in respect of his land *qua* which he was allegedly dispossessed. The finding of fact recorded by the trial Court cannot be appreciated in the manner as suggested by the plaintiff.

[13]. In view of above, I see no reasons to differ with the findings recorded by the trial Court. No question of law worth consideration is involved in the present revision petition. The revision petition is accordingly dismissed.

November 15, 2018	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No