

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

**RSA No.1479 of 2012 (O&M)
Date of Order: 16.07.2018**

Subhash

..Appellant

Versus

Jaipal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bhag Singh, Advocate,
for the appellant.

Mr. Kulvir Narwal, Advocate,
for respondent nos.5 and 6.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff filed a suit for declaration praying that civil court decree dated 12.04.1978 is illegal, null and void and he is entitled to enjoy the rights under the decree dated 21.02.1977.

Parties to this litigation are members of a family and pursuant to a family settlement, a consent decree under Order 12 Rule 6 CPC was got passed on 21.02.1977. Subsequently, family once again sat together and another family settlement took place which was duly acknowledged vide civil court decree dated 12.04.1978. Plaintiff has challenged the aforesaid decree on the ground of fraud and he was minor. In the decree dated 12.04.1978, plaintiff was represented by his father Jai Pal who was guardian ad litem. Jai Pal was also defendant no.1 in the aforesaid suit.

Both the courts after examining the evidence available on the

file have found that the suit filed by the plaintiff is barred by time as he challenged the civil court decree after a period of approximately 17 years. The courts have also noticed that the plaintiff attained majority in the year 1989 and he was required to file the suit to avoid action of his guardian within 3 years but no suit was filed within the time prescribed. The courts have further noticed that the plaintiff admits that defendant no.3 and 4 are in possession of the property in dispute for the last 25 years.

Learned counsel for the appellant while drawing attention to paragraphs 8, 9 and 10 of the plaint, has submitted that the plaintiff has pleaded that he gained knowledge of the decree only 4 months back and, therefore, the suit was within limitation.

I am afraid such contention of the learned counsel for the appellant cannot be accepted as plaintiff came out of the disability in the year 1989. Once he came out of the disability, he was required to challenge the action of the guardian within a period of 3 years. In the present case, even after attaining majority, plaintiff remained silent for almost 17 years. Still further as noticed by the courts plaintiff admits that defendant nos.3 and 4 are in continuous possession of the property. Once plaintiff knows that the defendants are in possession of the property, it was for the plaintiff to find out how defendant nos.3 and 4 were/are in possession. As per Section 6 of the Limitation Act, the limitation to file a suit gets extended during the period of legal disability. Therefore, the legal disability as noticed came to an end in the year 1989. Hence, the suit which was filed in the year 2006 hopelessly barred by limitation.

Still further, no evidence has been produced on record to prove that the decree was result of fraud. It is normal that joint members of a

Hindu family settle their dispute in a family settlement which is subsequently acknowledged by a civil court decree. This is what has been done in the present case.

In view thereof, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

July 16, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No