

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

107

RSA-4912-2012 (O & M)
Date of Decision:03.10.2018

Balkar Singh @ Buta Singh and others

...Appellants

Versus

Major Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Atul Jain, Advocate
for the appellants.

Ms. Surinder Kaur, Advocate for
Mr. Ravi Malhotra, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while dismissing their suit for declaration with a consequential relief of permanent injunction as also in alternative for joint possession. Plaintiffs and defendants No.1 to 5, 6, 7 to 10 claim to be owners in possession of various shares in the land measuring 80 kanals and 5 marlas. In fact, the plaintiffs have challenged the decree dated 22.05.1987, which was suffered by late Sh. Swaran Singh. The present suit from which this appeal arises, was filed on 12.02.1999.

It is not disputed that Swaran Singh through predecessor-in-interest of the plaintiff-Lachhman Singh had filed a suit challenging decree dated 22.07.1987. No doubt, during the pendency of the aforesaid suit, there was a settlement filed in the Court. However, suit was dismissed under

Order 9 Rule 8 of the Code of Civil Procedure on 31.07.1989. After

dismissal of the suit, Swaran Singh died on 12.06.1992 and the plaintiffs, who claimed to be legal heirs of Swaran Singh, as he died issueless, and was brother of Lachhman Singh, predecessor-in-interest of the plaintiffs, filed this suit.

Both the Courts have recorded a finding that present suit filed by the plaintiffs would be barred under Order 9 Rule 9 of the Code of Civil Procedure. The Courts have further found that the suit filed by the plaintiffs was barred by limitation.

Learned counsel for the appellants submitted that no doubt fresh suit at the behest of Swaran Singh was not maintainable but the plaintiffs can certainly file a suit. The argument does not have substance because the plaintiffs are also claiming the property through Sh. Swaran Singh.

In view thereof, there is no ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

03.10.2018
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(ANIL KSHETARPAL)
JUDGE

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