

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

RSA No. 5026 of 2012(O&M)

Date of decision: 18.4.2018

Sardara SinghAppellant

VERSUS

Nirbhai Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Deepak Bhardwaj, Advocate for the appellant.

Mr. Anil Garg, Advocate for the respondents.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 09.04.2012 passed by the Additional District Judge, Patiala whereby appeal against the judgment and decree dated 30.10.2010 passed by the Civil Judge (Junior Division), Patiala (hereinafter to be referred as 'the trial Court') was allowed, judgment and decree passed by the trial Court dismissing suit of the respondents/plaintiffs were set aside and suit filed by the respondent/plaintiffs was decreed to the effect that they are owners in possession to the extent of half share in electric motor connection installed in the joint land and the defendants are restrained from creating any hindrance against use of electric connection by the respondents/plaintiffs. Similarly, the respondents/plaintiffs would not

create any hindrance in using the electric motor connection by the defendants according to their shares.

Counsel for the appellant has submitted that the Court in appeal in concluding lines of para 13 of the judgment has made certain observations with regard to family settlement and failure of the defendants/appellants to disclose the date, month or year of the family settlement. It is argued with vehemence that the appellants/defendants never raised any such plea of family settlement, therefore, there was no reason for them either to prove any such oral family settlement or disclose the particulars thereof. It is further argued that as the factum of non-proving of oral family settlement has also weighed in the mind of Court in appeal for setting aside the judgment and decree passed by the trial Court, judgment and decree passed by the Court in appeal cannot be allowed to sustain and liable to be set aside.

Another submission made by counsel for the appellants is that the trial Court framed issue No.3 on the question of limitation, onus whereof was placed upon the respondents/plaintiffs. The trial Court answered issue No.3 against the respondents/plaintiffs by holding that the suit is time-barred. The Appellate Court without adverting to issue No.3 or setting aside findings of the trial Court on the said issue has accepted the appeal, not permissible in law. It has been prayed that the judgment and decree passed by the Court in appeal may be set aside and the matter be remitted to the Appellate Court for decision of the appeal afresh.

Counsel representing the respondents/plaintiffs is not in a position to substantiate observations made by the Appellate Court in the

concluding lines of para 13 of the judgment pertaining to family settlement. He has also not disputed that the Court in appeal has not addressed the question of limitation nor reversed findings of the trial court on issue No.3 pertaining to the suit being barred by limitation.

I have heard counsel for the parties, perused the paper-book and records particularly the judgments passed by the Courts.

On due consideration of the submissions made by counsel for the parties, it becomes undisputed position of the case that observations made by the first Appellate Court qua family settlement being set up by the appellants is alien to the facts brought before the trial Court or submissions made before the first Appellate Court. As has been rightly argued by counsel for the appellants, the Court in appeal did not consider the question of limitation which was answered against the respondents/plaintiffs by the trial Court and so also a ground for dismissal of the suit. In the given scenario, without adverting to the other findings recorded by the Appellate Court, the best course for this Court is to set aside the judgment and decree passed by the first Appellate Court and remit the matter to the Appellate Court for decision of the appeal afresh.

For the foregoing reasons, the appeal is allowed. Judgment and decree passed by the first Appellate Court are set aside. The matter is remitted to the first Appellate Court for decision of the appeal afresh in accordance with law.

The parties through their counsel shall appear before the first Appellate Court on 18.05.2018. The first Appellate Court shall dispose of

the appeal within a period of three months from the parties putting in appearance. No order as to costs.

APRIL 18, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no