

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

RSA No.412 of 2016 (O&M)

Date of decision:26.11.2018

Rajender Kumar

... Appellant

Vs.

Sarti Devi and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sudhanshu Makkar, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in claiming the ownership in respect of land measuring 0 kanal 4 marlas comprised in killa nos.97//13/1 and 97//18/2 on the basis of judgment and decree dated 29.4.1995 passed in civil suit no.323 of 1995.

It was alleged that defendants no.1 and 2 had suffered a consent decree in favour of the plaintiff in respect of land measuring 4 marlas and a residential house and writing to that effect of even date acknowledging that there was a mistake with regard to khasra number in the aforementioned consent decree which inadvertently was mentioned as 97///13/2/1 and there was no reference of other khasra number. However, the plaintiff was put into possession and had been enjoying the same. The cause of action to file the suit in 2004 arose when the defendants extended threats of forcible interference and dispossession.

The defendants denied/opposed the suit by denying the aforementioned averments, much less any consideration and possession of the plaintiff but factum of residential house was admitted.

Mr. Sudhanshu Makkar, learned counsel appearing on behalf of the appellant-plaintiff submitted that consent decree could not have been ignored particularly when the defendants admitted the factum of residential house. It was a case of total deceitment on behalf of the defendants in not honouring the commitment expressed in the consent decree and writing of even date. The cause of action only arose when intention of the defendants became dishonest, therefore, the Courts below could not have non-suited the appellant-plaintiff on the ground of limitation.

I am afraid the aforementioned argument is not sustainable, for, if at all, there was a mistake in the consent decree, a writing to that effect was also effected in 1995, no joint effort was made to move an application for correction as per the provisions of Sections 152 and 153 CPC. In such circumstances, finding of facts and law with regard to suit being barred by law of limitation filed after lapse of 09 years is the correct view.

The apprehension expressed for denying declaration qua residential house is totally mis-placed, for, there is a categoric admission in the written statement acknowledging the consent decree.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 26, 2018
savita

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