

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

RSA No.917 of 2016(O&M)

Date of Decision:19.11.2018

Haroon

.....Appellant

Vs.

Babu through LRs. Akhtari and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Vikas P.Singh, Advocate for the
appellant.

AMIT RAWAL J.(Oral)

CM-2522-C-2016

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the delay of 10 days in re-filing the review application is condoned.

CM stands disposed of.

RSA No.917 of 2016

Appellant-plaintiff has not been successful in seeking declaration to be owner in possession of the property to the extent of 1/4th share on the basis of Civil Court decree dated 22.01.1970 passed in Civil Suit No.137 of 1970.

It was alleged that as per decree of 1970, a family partition had been taken place, wherein the plaintiff was declared owner in possession of ¼ share.

The defendant No.1 opposed the aforementioned suit by relying upon decree dated 24.09.1992 passed in Civil Suit No.162 of 1992. As per the aforementioned decree, the appellant-plaintiff was conferred 1/7th share, vide mutation no.1212. The aforementioned mutation has been challenged in the present suit filed in 2007. The defendant after filing written statement was

proceeded *ex-parte*.

The plaintiff brought on record numerous documents(Ex.P-1 to P-16) in this regard.

The Courts below did not agree with the plaintiff.

Learned counsel appearing on behalf of the appellant submitted that judgments and decrees of the Courts below are not sustainable in the eyes of law, as decree of 1992 incorporating the name of the appellant as co-plaintiff was without signatures and, therefore, the said decree could not have been passed. Once there was already a decree of 1970, it was required to be entered in the revenue record, for, at that point of time, the plaintiff was minor.

I am afraid the aforementioned argument is not sustainable as no evidence as per provision of Order 6 Rule 4 of the Code of Civil Procedure has come on record with regard to the fraudulent act or misrepresentation having been played upon the plaintiff. In such circumstances, the suit could not have been filed under Article 59 of the limitation Act instead it should be under Article 58. In case, such suit is filed claiming unidentical declaration after having third decree, the person cannot turn around after nine years with a different grievance.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

19.11.2018
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No