

RSA No. 1794 of 2017(O&M)
Date of decision:27.11.2018

Mahipat (since deceased) through his LRs ...Appellants

Versus

Mohar Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Tanmoy Gupta, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-4357-C-2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 33 days in refiling the appeal, is condoned.

C.M. stands allowed.

CM-4358-C-2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 19 days in filing the appeal, is condoned.

C.M. stands allowed.

CM-4359-C-2017

The instant application has been filed under order 22 Rule 3 read with Section 151 CPC for impleading the legal heirs of deceased Mahipat son of Balwant Singh-appellant.

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. Jagjeet Singh & Dharmendra Singh are ordered to be impleaded as appellants.

RSA No. 1794 of 2017

Plaintiff has not been successful in seeking declaration with

consequential relief of permanent injunction in making deficiency in the land allegedly given to him as per the consent decree dated 16.08.1973 in Civil Suit No. 241 of 1973. The case of the plaintiff was that his father-Balwant Singh suffered a consent decree and gave various parcels/parts of land to his three sons, Brahmanand, Parmanand and Mahipat. Plaintiff-Mahipat relied that a portion of the land during the consent decree did not belong to Balwant Singh and thus necessity arose to file the suit, even no rectangle number was mentioned in the consent decree with regard to Killa No.3 & 4/1. Defendant opposed upon the suit alleged that plaintiff was in knowledge of this as he was party in the previous suit, therefore, the suit was barred by the law of limitation.

Trial Court agreed with the contention of the defendant, and dismissed the suit on the ground of limitation.

I am afraid that the contention raised by the plaintiff before this Court and the Courts below/cannot be sustained as after the consent decree passed in August, 1973, Balwant Singh remained alive almost many decades. No steps were taken to rectify the same. Suit was filed only after the demise and by that time there was a clash of interest.

A person knowing this fact cannot bring the case under Provisions of Article 59 instead the suit was to be filed within three years from the alleged cause of action as per the provisions of Article 58.

No fault can be found with the concurrent finding of facts.

The present Regular Second Appeal is dismissed.

27.11.2018*renu bala***(AMIT RAWAL)
JUDGE**

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