

RSA-289 of 2018 (O&M)

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

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**RSA-289 of 2018 (O&M)
Date of Decision : 15.2.2018**

BILLU SINGH AND OTHERS

....APPELLANTS

VS

SMT. NEELO

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Sarbjit Singh Grewal, Advocate
for the appellants.

AJAY TEWARI, J.(Oral)

CM-647-C-2018

This is an application to make up the deficiency of Court fees.

Deficiency of Court fee stands make good. Application stands allowed.

Main Case

This appeal has been filed against the judgment of the lower Appellate Court reversing that of the trial Court and thereby decreeing a suit filed by the respondent. The respondent No.1 had challenged the mutation and a sale deed executed by the appellant No.1 in favour of the appellants No. 2 and 3. It was her case that she was co- owner of the land in dispute and the mutation in favour of the appellant No. 1 and sale deed in favour of the appellants No.2 and 3 were invalid. The case of the

appellant No.1 was that the mutation of the share of respondent had been sanctioned in his favour on the basis of decree dated 26.3.1977 suffered by the father of the party in favour of the appellant No.1-Billu Singh where she had accepted her claim and he had sold the property to the appellants No. 2 and 3.

The trial Court non-suited the respondent on two grounds. Firstly, the suit was beyond limitation and secondly, she did not place on record even the judgment and decree dated 26.3.1977 which she had challenged. The appellate Court however held that the suit could not have been dismissed on ground of limitation since it was a suit based on title and as regards the non-production of the judgment and decree dated 26.3.1977, the Court noticed that once the appellant No.1 had admitted the previous title of the respondent it was for him to have proved the judgment and decree dated 26.3.1977. Moreover, the Court noticed that the respondent had made various efforts to get certified copy of that judgment and decree but the same was not available on the record and to this effect that the Court official had also given his testimony. It was in this circumstances that appellate Court had held that the primary duty to produce the judgment and decree was on the appellants who derived their title therefrom and onus to prove title was wrongly stated by the trial Court to be on the plaintiff. Learned counsel has not been able to show how these findings are wrong. It is beyond the pale of any controversy that a suit for possession on the basis of title is never hit by limitation as held by the Supreme Court in the matter of ***Indira vs. Arumugam and another 1998 (2) SLJ 1190***. Further, once the appellants were relying

upon the decree dated 26.3.1977 to show their title the onus heavily lay upon them to prove the same.

In the circumstances, no fault can be found with the judgment of the lower Appellate Court. The appeal stands dismissed.

Since the main case has been decided, the pending C.M, if any, also stand disposed of.

15.2.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No