

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

**R.S.A No.5364 of 2017(O&M)
Date of decision :11.10.2018**

Hari Chand and others

..... Appellants

Versus

Jasbir Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Neha Jain, Advocate
for the appellants.

LISA GILL,J

This appeal has been filed challenging judgments and decrees dated 30.10.2015 passed by the learned Additional Civil Judge (Sr. Division), Dera Bassi, as well as judgment and decree dated 21.02.2017, passed by the learned District Judge, SAS Nagar (Mohali). Suit filed by the plaintiff-appellants has been dismissed.

Brief facts necessary for the adjudication of the case are that the plaintiffs filed a suit for recovery of un-liquidated damages against the defendants with the pleading that the defendants were responsible for the murder of Bhuro wife of appellant-no.1 Hari Chand. FIR No. 26 dated 06.04.1998, under Sections 302, 506, 34 IPC, was lodged against all the three defendants. All of them were convicted by the learned trial Court.

Conviction of respondents no.2 and 3 was set aside in appeal by this Court while affording benefit of doubt to them. However, acquittal of respondent no.2 was set aside and his conviction affirmed by the Hon'ble Supreme Court on 21.10.2011. Thus respondents no.1 and 2 stood convicted of the offence in question.

Defendant-respondent no.2 resisted the suit. Written statement taking various preliminary objections was filed. Averments on merits were controverted. It was stated that the suit filed by the appellant-plaintiffs was time barred. It was alleged that the plaintiffs never disclosed the fact regarding his acquittal in case FIR no. 26 dated 26, under Sections 302, 506, 34 IPC, registered at Police Station Lalru. Criminal Revision No. 1911 of 2001 filed by appellant-Hari Chand for enhancement of fine imposed upon the defendants was also dismissed by this Court. Dismissal of the suit was prayed for.

Defendant no.1 appeared through his counsel, but later on failed to appear before the learned trial Court and was proceeded against *ex parte* vide order dated 19.09.2014.

Defendant no.3 failed to appear despite being served through publication and was proceeded against *ex parte* vide order dated 21.11.2014 by the learned trial Court.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to recovery of un-liquidated damages suffered by the plaintiff as prayed for?OPP
2. Whether the suit is not legally maintainable in the present form?OPD

3. Whether the suit of the plaintiff is clearly time barred? OPD
4. Whether the plaintiff has not come to the Court with clean hands? OPD
5. Whether the plaintiff has got no locus standi/ cause of action to file the present suit? OPD
6. Whether the plaintiffs are estopped from filing the present suit at their own act and conduct? OPD
7. Relief.

Both the plaintiff and defendant-respondent no.2 led evidence in support of their respective claims.

Learned trial Court on considering the facts and circumstances of the case concluded that the suit was beyond limitation as the incident in question had taken place on 06.04.1998, whereas the suit was filed on 18.08.2012 i.e. after a lapse of more than 14 years.

Appeal filed by the appellants was also dismissed by the learned District Judge, S.A.S. Nagar (Mohali), vide judgment and decree dated 21.02.2017.

Aggrieved therefore, the present appeal has been filed.

Learned counsel for the appellants vehemently argues that the factum of the suit being filed after about 12 years of the incident should not be held against the appellants because they were waiting for the final culmination of the proceedings emanating from FIR No. 26 dated 06.04.1998 under Sections 302, 506, 34 IPC. It is thus prayed that the present appeal be allowed and suit filed by the appellant-plaintiffs be decreed.

I have heard learned counsel for the appellants and have gone through the file with her able assistance.

It cannot be denied that as per Article 113 of the Indian Limitation Act, 1963, stipulated period of limitation for recovery of compensation in such matters is three (03) years. Reliance has been rightly placed by the learned Courts below on the judgements of this Court in **Partap Singh Vs. Gurdial Singh, 1998 (4) R.C.R (Civil) 374 and Sandeep Singh Vs. Malkit Singh, 2012 (2) PLR 461**. Suit filed by the appellant-plaintiff has been rightly dismissed being barred by limitation.

Learned counsel for the appellant-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 30.10.2015 and 21.02.2017 passed by the learned Addl. Civil Judge (Sr. Division) Dera Bassi and learned District Judge, S.A.S Nagar (Mohali), respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

11.10.2018

s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No