

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

**RSA No.647 of 2017 (O&M)
Date of Decision.31.10.2018**

SatyawatiAppellant

Vs

Jagdish and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff had not been able to succeed in both the Courts below claiming declaration and injunction in the alternative relief of possession while laying challenge to the judgment and decree dated 22.02.1979 rendered in Civil Suit No.498 dated 20.08.1976 and judgment and decree dated 18.12.1976 passed in Civil Suit No.510 of 1976, subsequent mutation and gift deed dated 23.10.1974 allegedly executed by Rati Ram in favour of the defendant.

It was alleged that the aforementioned judgments and decrees were not defended by the duly appointed guardian as one of the guardian had adverse interest and another aunt of Rati Ram did not defend the suit. Rati Ram was son of Kunji. He died in the year 1948-49 whereas Maya Wati, mother of plaintiff and pro forma defendant-Santa died in the year 1976. After death of Kunji, Ram Devi performed kareva marriage with Hira Singh and out of loins of Hira Singh, defendant Jagdish was born. The aforementioned decrees had erroneously been passed against the appellant-plaintiff and

another sister, who were minors at that point of time. Rati Ram had also executed a Will dated 02.12.1974. One of the witnesses of the Will turned hostile and another witness had died but scribe and its record was examined. Ram Devi mother of Rati Ram had filed the suit in the year 1976, resulting into decree of 1979.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Amit Jain appearing for the appellant-plaintiff submitted that the Courts below have erred in proceeding to decide the dispute on conjectures and surmises, both the decrees were collusive and liable to be declared as null and void as fraud had been played upon the plaintiff. Both the oral and documentary evidence were misread. Mutation of inheritance No.470 and 1073 of Rati Ram was sanctioned in favour of the plaintiff and the pro forma defendant without any objection from Ram Devi but this fact has totally been ignored. The suit could not have been dismissed on the ground of limitation as the plaintiff and the pro forma defendant acquired knowledge in the year 2007 when the suit was filed.

I am afraid aforementioned argument of Mr. Jain is not sustainable, for, both the daughters of Rati Ram were born in the year 1971 and 1974 and at the time of passing of the decrees in the year 1976 and 1979, they were minor being 4-5 years old and attained majority in the year 1989 and 1992 whereas the suit had been filed in the year 2007. The suit was *ex facie* barred by limitation as the challenge could have been laid within three years from the date of attaining of majority. All other facts regarding the Will, thus, would become inconsequential.

For the reasons aforementioned, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 31, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No