

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

**RSA No.975 of 2017 (O&M)
Date of Decision:22.10.2018**

Shakuntla

...Appellant

Versus

Santosh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Jai Vir Yadav, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, dismissing the suit filed by the plaintiff, challenging the judgment and decree dated 15.6.1993 passed in the suit titled as 'Smt.Santosh Devi Vs. Ganeshi Lal and others'.

Ganeshi Lal had four daughters namely Shakuntla, plaintiff/appellant, Mewa Devi, Santosh and Priyanta Devi @ Kiryanta Devi. Santosh become widow. On the basis of a family settlement property in dispute had come to the share of Santosh. She filed a suit, Ganeshi Lal, who was owner, filed a written statement, admitting the family settlement dated 13.6.1975. However, before the suit could be decided, unfortunately Ganeshi Lal died. His legal representatives were impleaded. Three legal representatives namely Surji, mother of the parties, Mewa Devi and Priyanta Devi @ Kiryanta Devi filed a written statement, acknowledging the family settlement. However, notice sent to Shakuntla, the plaintiff-appellant, was received back with the report of refusal. The court decreed the suit on 15.6.1993. Shakuntla filed the present suit in the year 2006.

Both the courts on appreciation of evidence have found that the decree has been correctly passed and the plaintiff was rightly proceeded against ex parte.

Although, both the courts have held that the suit is not maintainable as only an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside ex parte was required to be filed, however, there is no explanation why the plaintiff did not file the suit or his application within the time prescribed. The decree of 1993 is sought to be challenged after a period of more than 12 years.

In view of the above, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below. The present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

22.10.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No