

CM No. 2145-C of 2018 in
RA-RS No. 9-C of 2018 in
RSA No. 3252 of 2012

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
CM No. 2145-C of 2018 in/and
RA-RS No. 9-C of 2018 in
RSA No. 3252 of 2012
Date of decision : May 25, 2018

Renu Chugh and others

..... **Petitioner**

Versus

Parshotam Mohan Lal and others

..... **Respondents**

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gaurav Chopra , Advocate
for the applicant-respondent Nos. 1 to 3.

Mr. Vikas Kumar, Advocate
for the non-applicants.

AMIT RAWAL, J (oral).

This order of mine shall dispose of review application bearing RS-9-C of 2018 filed under Order 47 Rule 1 CPC seeking review of the order dated 12.4.2016 whereby Regular Second Appeal aforementioned while setting aside the judgment and decree of the court below had been allowed.

Concededly, the aforementioned order of this Court was assailed before the Supreme Court vide SLP (Civil) No. 18999 of 2016 and vide order dated 17.8.2016. The same has been dismissed. The review application has been filed accompanied by an application seeking condonation of delay of 630 days on the premise that in the process of filing SLP delay, aforementioned occurred.

Mr. Vikas Kumar, learned counsel appearing on behalf
of the non-applicant-appellant submitted that delay is intentional and no

cause of action arise for filing review application as there is error apparent on the record.

On merits Mr. Gaurav Chopra learned counsel appearing on behalf of the applicants respondents submitted that the appellants-plaintiffs instituted a suit for declaration challenging the Will dated 4.7.1991 executed by Ram Devi widow of Murari Lal in favour of defendant Nos. 1 to 3 in respect of land described in the suit with a separate 1/4th share in respect of the aforementioned property of Ram Devi with consequential relief of permanent injunction restraining the defendants from alienating/parting with the possession in any manner. The aforementioned suit was dismissed by the trial court and the aforementioned finding was affirmed by the lower appellate court. However, as noticed above, this Court while interpreting the provisions of Section 14(1) of the Hindu Succession Act, 1954 reversed the finding and set aside the Will. In essence, the suit was decreed in toto but submitted that an error apparent on the record has occurred, for, the respondents-plaintiffs had also claimed relief with regard to gold and FDR. The trial court negated the aforementioned plea as no evidence with regard to gold or FDR, had been led but, yet declined to grant declaration.

Mr. Vikas Kumar, learned counsel appearing on behalf of the decree holder do not dispute the fact that there was no evidence about gold and FDR since this court had already decreed the suit in toto and judgment of this Court merged into the judgment of Hon'ble Supreme Court thus no cause of action survived for seeking review as there is no error.

Under the garb of review application the applicant is seeking possession of

1/4th share in the property.

I have heard learned counsel for the parties, appraised the paper book and have gone through the contents of the application and submission of the learned counsels and of the view that concededly there is an error apparent on record in the order. In two lines of the judgment of courts below extracted hereinbelow, held that non-applicant-plaintiffs had not been successful in leading evidence with regard to claim qua gold and FDR:-

“No detail of the Gold and the FDRS declaration qua which has been sought by the plaintiff has been mentioned in the plaint nor any evidence with regard to their details has been brought on file by the plaintiffs. It has been stated by PW Renu Bala in her cross examination that mother in law had bangles, matter Mala, Set, ear rings, finger rings of gold. The description is not mentioned in the plaint. She had FDRs but she does not its details. She could not know about any deposit in her name previously even.”

Keeping in view the aforementioned facts, I am of the view that observation of this Court in decreeing the suit in toto would not constitute a decree in respect of gold and FDRs.

Mr. Gaurav Chopra, learned counsel appearing on behalf of the applicant-review petitioner submitted that they are still owner in possession of 1/4th share of the suit property.

Mr. Vikas Kumar, learned counsel appearing for the non-

applicant has drawn attention of this court to arbitration clause culminated into the award where the area had already been identified/specified.

Since execution application is pending and in view of the undertaking given by Mr. Gaurav Chopra, let the execution applicant suffer a statement before the executing court. In case of any deviation from the undertaking, liberty is granted to the non-applicant-petitioner to move an application.

The review applications stands disposed of.

(AMIT RAWAL)
JUDGE

May 25, 2018
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Whether speaking/reasoned	Yes
Whether Reportable	No