

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

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**RSA 3113 of 2009 (O&M)
Date of decision 11.02.2019**

Fakira

.....Appellant

V/S

Lal Chand and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. H S Bhullar, Advocate
for the appellant

Mr. Aakash Singla, Advocate
for the respondents

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against concurrent findings of fact recorded by the Courts whereby suit filed by the appellant/plaintiff seeking declaration that judgment and decree dated 13.10.1998 passed by the Court of Shri A K Bimal, the then Additional District Judge, Sirsa in favour of defendants No. 1 to 4 and against defendants No. 5 to 10 in Civil appeal No. 214 of 1998 titled *Smt. Rakhi alias Pameli and others vs State of Haryana and others* is illegal, null and void, against law and fact, thus, not binding upon rights of the plaintiffs was dismissed by the trial Court vide judgment and decree dated 31.07.2008 but appeal preferred by one of the plaintiffs namely Fakira (appellant herein) was dismissed by the Addl. District Judge, Fast Track

Court, Sirsa.

Counsel for the appellant would argue that the appellate Court dismissed the appeal primarily on the ground that suit filed by the appellant to challenge judgment and decree dated 13.10.1998 in May 2010 is clearly barred by limitation whereas actually the suit has been filed before expiry of three years from the date of judgment and decree dated 13.10.1998 was passed by the District Judge Sirsa, assailed in the present lis. It is further submitted that the appellate Court has not discharged its functions while deciding factual and legal issues involved in the case threadbare and disposed of the appeal in a perfunctory manner by holding that the suit is barred by limitation but without assigning any reason supporting its view.

Counsel representing the private respondents, on the contrary, has supported the judgments passed by the Courts with the submission that mutation with regard to inheritance of Shri Manphool who died on 26.06.1956 was wrongly sanctioned in favour of Chando Devi his widow but Manphool actually left behind his widow and four daughters who are Class I heirs in view of provisions of Hindu Succession Act, 1956 that came into force on 17.06.1956, prior to death of Shri Manphool. It is further argued that the trial Court, on a detailed consideration of the matter, has rightly non-suited the plaintiffs/appellant when as a matter of fact, there is admission by one of the plaintiffs that they were aware of pendency of the suit filed by Smt Rakhi and others that culminated in judgment and decree dated 13.10.1998 passed by the Additional District Judge, Sirsa.

Be that as it may, perusal of the judgment passed by the Addl.

District Judge, Fast Track Court, Sirsa would reveal that the Court has accepted contention of the respondents therein on the solitary ground that suit filed by the plaintiffs on 11.05.2000 to challenge judgment and decree dated 13.10.1998 is clearly barred by limitation. In concluding lines of para 11 of the judgment, the Court has held that the judgment and decree under challenge was rightly passed by the Court of Shri A K Bimal, the then Additional District Judge, Sirsa and the same has attained finality. No reasons whatsoever have been assigned by the Appellate Court either to say that the suit is barred by limitation or to affirm findings of the trial Court that judgment and decree under challenge has rightly been passed by the Court. As a matter of fact, the appellate Court has concluded the findings in para 11 of the judgment in a very sketchy manner and the same clearly reflects that the appellate Court has shirked its responsibility of appreciating the entire matter in detail and thereafter to record findings either to affirm or set aside findings of the trial Court on various issues framed in the case. In this view of the matter, judgment and decree passed by the Court in appeal cannot be allowed to sustain and the matter needs remittance to the appellate Court for decision of the appeal afresh, keeping in mind its obligation prescribed under the Code of Civil Procedure, in accordance with law.

In view of what has been discussed herein-before, the appeal is allowed, judgment and decree passed by the appellate Court are set aside and the matter is remitted to the appellate Court for decision of the appeal afresh, in accordance with law. Parties through their counsel are directed to appear before the appellate Court on 26.02.2019. The appellate Court is

directed to decide the appeal within three months of parties putting in appearance. Nothing stated herein-before shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

11.02.2019
mohan bimbura