

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

**RSA No.1665 of 2016 (O&M)
Date of Decision.16.01.2019**

Anil Kumar

...Appellant

Vs

Surender Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek Khatri, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The regular second appeal is directed against the concurrent finding of fact whereby the appellant-plaintiff has not been successful in setting aside of the Release Deed dated 31.05.2001 executed by him in favour of defendants to be illegal, null and void.

It was alleged that defendants were none else but the brothers, who played fraud upon him and got the Release Deed executed, knowledge of which was acquired only in July 2011 and suit was filed on 30.07.2011. In fact, there was already a decree in civil suit No.563 and mutation bearing No.2884 was sanctioned in favour of the plaintiff. In the present suit, he alleged to be owner of 22 kanals 15 marlas, which was transferred to him from his father, therefore, he was absolute owner.

Defendants opposed the suit and raised objection qua maintainability of the suit and the execution of the release deed was to be a voluntary act. The suit was stated to be time barred and had been filed out of greed and nothing beyond that.

Plaintiff examined himself and brought on record Ex.P1 to P8 i.e. jamabandi, mutation, decree sheet and closed the evidence

whereas the defendants examined five witnesses and brought on record the release deed.

Mr. Khatri, learned counsel appearing on behalf of the appellant submitted that plaintiff was not aware of the aforementioned fact as the possession continued to be with him, though the mutation reflected ownership of the defendants. Ingredients of fraud and misrepresentation had already been proved on record but the same remained unnoticed and therefore, there is abdication.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. If at all, the plaintiff was in possession, nothing prevented him to place on record khasra girdawari to bring the case within the period of limitation. It cannot be a case under Article 59 of the Limitation Act raising the cause of action from the date of knowledge whereas it should have been Article 58 as it is a registered document, which has to be assailed within a period of three years, in view of the law laid down by Hon'ble Supreme Court in *Ramti Devi Vs. UOI (1995) 1 SCC 198.*

In view of such circumstances, arguments of Mr.Khatri has not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 16, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No