

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

**RSA No.281 of 2016 (O&M)
Date of Decision.21.05.2019**

Bijender Singh @ Birender Singh

...Appellant

Vs

Naresh Kumar and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

**Present: Mr. Arjun Atri, Advocate
for the appellant.**

-. -

AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in claiming declaration and consequential relief and permanent injunction by setting aside the judgment and decree dated 7.5.1998 in civil suit No.62 of 1997 titled as Naresh Kumar Vs. Birender and as well as sale deed dated 19.03.2007 executed by Naresh, defendant No.1 in favour of Saroj Tanwar, defendant No.2. It was stated to be a case of fraud and misrepresentation as he had never appeared in the aforementioned proceedings.

Defendant No.1 contested the suit and alleged that the suit property had already been partitioned in favour of the defendant by virtue of decree which was on account of his own volition and further passed on to defendant No.2.

Defendant No.2 claimed herself to be a bona fide purchaser and in occupation of residential house constructed on the suit property.

Appellant-plaintiff examined four witnesses i.e. clerk

from the office of Registrar, DC Office as PW2 and the person who brought summoned record as PW1, himself as PW3 and one official from the Sessions Court as PW4 whereas defendant No.2 examined herself and closed evidence.

Learned counsel appearing on behalf of the appellant submitted that both the Courts below have abdicated in not noticing the fraud and misrepresentation having been played upon the plaintiff as decree was not intended for partition but was for some other purpose and on acquiring the knowledge of the sale in 2007, suit filed in the year 2009 cannot be said to be time barred. Courts below have non-suited the plaintiff clearly on the ground that appellant-plaintiff has not been able to prove fraud and misrepresentation.

I am afraid aforementioned argument would not be sustainable for not taking assistance of expert to examine signature in the statement and written statement in the aforementioned suit, resulting into decree dated 07.05.1998. During all this period, plaintiff had not taken any action though defendant was in exclusive possession of the same and only woken up two years after the sale of March, 2007. It was nothing but an act of greed, rightly so the suit has been dismissed.

The appeal is also accompanied by application for condonation of delay of 25 days in filing and 83 days in re-filing of the appeal. The explanation given is not reasonable and plausible.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact, 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 both on the ground of delay as well as on merit.

May 21, 2019

Pankaj*

(AMIT RAWAL)

JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No