

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

RSA No. 1165 of 2018(O&M)

Date of decision: 22.7.2019

Lachhman Singh and others

.....Appellants

VERSUS

Tarsem Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S. Khinda, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 01.09.2017 passed by the Additional District Judge, Kapurthala whereby appeal preferred by the defendants/respondents against judgment and decree dated 23.12.2015 passed by the trial Court, decreeing the suit of the plaintiffs/appellants was accepted, impugned judgment and decree dated 23.12.2015 was set aside and suit filed by the plaintiffs/appellants was dismissed.

Counsel for the appellants would argue that the plaintiffs purchased 16 kanal 11 marlas of land from Salwant Kaur wife of Bachan Singh vide sale deed dated 11.12.1978. Another piece of land measuring 5 kanal 15 marlas was purchased from said Salwant Kaur vide sale deed dated 08.07.1975 and in this manner, the plaintiffs purchased 22 kanal 6 marlas of land out of land measuring 33 kanal 9 marlas owned by Salwant Kaur as a co-sharer. It is further submitted that Chanan Singh filed suit against Salwant Kaur and others including predecessor in interest of the

plaintiffs and the same was decided in favour of said Chanan Singh vide judgment and decree dated 20.07.1983 produced on record and decision in the said case has attained finality. He would fairly inform that in the said litigation, plea raised by the appellants/plaintiffs that they are bona fide purchaser for consideration was rejected. It is argued that as Smt. Salwant Kaur was still left with share to the extent of 10 kanal 6 marlas of land, the appellants/plaintiffs have rightly been declared as co-owner to the extent of 7 kanal 7 marlas of land by the trial Court but the Court in appeal has wrongly allowed the appeal filed by the respondents/defendants by invoking the principle of res judicata and suit being barred by limitation.

I have heard counsel for the appellants, perused the paper-book and records.

Be that as it may, in suit filed by Chanan Singh, the appellants/plaintiffs or their predecessor in interest were impleaded as a party wherein Chanan Singh claimed certain rights on the basis of earlier litigation between him and Salwant Kaur wherein gift deed in favour of Salwant Kaur was set aside and his claim was accepted by the Court and the matter was decided upto High Court. The plea of the appellants that they are bona fide purchasers of land on the basis of two sale deeds aforesaid was rejected. If the appellants had some right in land owned by Salwant Kaur on the basis of some other plea available to them but they failed to raise that plea in the said suit, the present suit filed by them is barred by the principle of constructive res judicata and as such the Appellate Court has rightly invoked the said principle. This apart, since the earlier litigation was decided in the year 1983 and had attained finality upto this Court in the year 1995, cause of action to seek any such

declaration accrued to the appellants in the year 1995, therefore, the present suit filed in the year 2009 has rightly been held to be barred by limitation.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

JULY 22, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no