

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

**RSA No.4683 of 2014 (O&M)
Date of decision:05.02.2019**

Banarsi

... Appellant

Vs.

Joginder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ramender Chauhan, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.10912-C of 2014

For the reasons stated in the application which is duly supported by an affidavit, delay of 169 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.4683 of 2014 (O&M)

The appellant-plaintiff has not been successful before the trial Court and in appeal seeking declaration and permanent injunction by setting aside the decree dated 10.11.1994 suffered by him in favour of the defendant being an outcome of fraud and mis-representation.

It was alleged that defendants no.1 to 7 being clever persons obtained the decree regarding the share of plaintiff and proforma defendant as in the plaint nothing was mentioned about the date, month or year of the alleged family settlement which required registration. She being illiterate

lady did not know the intricacy, filed the suit in the year 2003.

The defendant opposed the suit by raising all the preliminary objections including the limitation. It was stated that decree was voluntary act and without any undue influence or pressure.

The plaintiff in support of the pleadings examined Rajesh Kumar as PW1, Devi Singh as PW2, Krishan DRK DC Officer as PW3, Raj Kumar as PW4, Surat Singh Numberdar as PW5 and Banarsi as PW6 and brought on record documents Ex.P1 to Ex.P5 i.e. jamabandis, mutation, copy of judgment and decree and statement. On the other hand, defendant examined six witnesses and brought on record Ex.D1 to Ex.D3.

Mr. Ramender Chauhan, learned counsel appearing on behalf of the appellant-plaintiff submitted that signatures on the written statement and power of attorney did not tally. There is no limitation for claiming the title. The consent decree is without any pre-existing right, therefore, requires registration.

I am afraid the aforementioned argument is not sustainable, for, concededly, possession in this case since the date of decree was in favour of the defendant, though plaintiff failed to obtain the injunction qua forcible dis-possession in view of the mutation. The provisions of Articles 58 and 59 of the Limitation Act, prescribed limitation of three years in view of the events described.

It is very convenient for the appellant-plaintiff to bring the case within the provisions of Article 59 of the Limitation Act from the date of the knowledge but the attenuating circumstances regarding possession feigned

ignorance of the decree for the almost 09 years, cannot be ignored. The decree also referred to some family settlement, therefore, in such circumstances, did not require registration. Raj Kumar Sharma, Advocate identified the signatures on the original power of attorney and written statement filed by the plaintiff in civil suit resulting into decree dated 10.11.1994.

For the reasons aforementioned, there is no illegality and perversity in the judgments and decrees of the Courts below. No substantial question of law arises for adjudication of the present appeal.

The regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 05, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No