

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

103

**RSA No. 5053 of 2014 (O & M)
Date of decision : 6.3.2019**

Chhotey Lal and others

.....Appellants

v.

Yad Ram and another

.....Respondents

CORAM HON'BLE MR. JUSTICE AMIT RAWAL

Present:- B.S. Tewatia, Advocate, for the appellants

AMIT RAWAL, J.

CM No. 11916-C of 2014 :

For the reasons mentioned in the application, which is supported by an affidavit, delay of 11 days in re-filing the present appeal is condoned. Application is allowed.

RSA No. 5053 of 2014 :

The appellants/plaintiff has not been successful before the Courts below in claiming declaration, permanent injunction by filing suit in 2004, assailing the judgment and decree dated 28.11.1994 rendered in Civil Suit No. 553 of 1994 titled as Yad Ram and Shyambir v. Chhotey Lal, on the premise that no family settlement had ever taken place much less no consent or permission was given. The defendants practiced fraud and misrepresentation with respect of the suit land. The suit property was alienated without legal necessity as it was ancestral in nature. Mutation No. 1274 was erroneously entered though the plaintiff had not delivered the possession of the suit property.

The defendants opposed the suit by defending the decree to have been suffered by the plaintiff on account of his own volition and willful act and described the nature of the property to be non-ancestral. It was further alleged that the possession was handed over on the day of mutation.

The plaintiff in support of his evidence, brought on record Ex.P-1 to P-10 besides examining himself and one Chahat, whereas, defendants examined Record Keeper, Palwal, Handwriting and Fingerprints Expert and Yad Ram himself stepped into the witness box as DW3.

Learned counsel appearing on behalf the appellants submitted that consent decree requires registration and in the absence of registration, it could not confer any title in favour of defendants. Defendants had played fraud and misrepresentation as no consent had been taken from the plaintiffs. There is no limitation to assert the right on the basis of title as the possession continued to remain with the plaintiffs.

I have heard learned counsel for the appellants and of the view that aforementioned arguments are not sustainable in the eyes of law, for, the signatures in the written statement and power of attorney, in the previous suit are of the appellant/plaintiff. Mutation No. 1274 was sanctioned and possession was also with the defendants. No doubt, the suit for claiming right on the basis of title in the property can be filed provided the possession on record is in favour of protected parties. Mutation No.1274 reflected the ownership in favour of the defendants. If it all the plaintiff was in possession, nothing prevented him to place on record the khasra girdawari for the last 10 years.

In such circumstances as per the provisions of Article 56 of Limitation Act, to declare the forgery of an instrument, the limitation is three

years. The present suit was filed in the year 2004 challenging the judgment and decreed dated 28.11.1994 is emphathetically barred by law of limitation.

No ground for interference is made out.

The present appeal is dismissed.

(AMIT RAWAL)
JUDGE

6.3.2019
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No