

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

RSA No. 2188 of 2018(O&M)

Date of decision: 2.9.2019

State of Haryana through Executive Engineer, Jind Water Services
Division JindAppellant

VERSUS

Lajwanti now deceased through LRsRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rohit Arya, AAG, Haryana for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration in respect of land measuring 12 kanal 5 marlas and possession of land measuring 7 kanal 12 marlas out of land measuring 12 kanal 5 marlas, detailed in para 1 (un-numbered) of the judgment of trial Court was dismissed vide judgment and decree dated 30.03.2013 and appeal preferred by unsuccessful appellant- State of Haryana was dismissed on 25.05.2017 by the Additional District Judge, Jind.

Counsel for the appellant, in response to a query, would fairly inform that in none of the documents produced on record by the appellant, there is reference to disputed land to substantiate plea of the appellant that land in question was acquired in the year 1956 even before bifurcation of State of Punjab and Haryana in November 1966. It is further argued that the respondent/defendant filed suit in respect of the suit land in the year 1993 and long delay of more than 30 years in seeking the remedy before

the Court in law speaks volumes that claim raised by the respondent/defendant is hollow, therefore, when the case is examined from the point of view of equity, the Courts have wrongly dismissed claim of the appellant – State of Haryana. Counsel would inform that litigation initiated by Smt. Lajwanti remained pending upto Hon'ble the Supreme Court but in the suit filed by her, defence of State of Haryana was struck off and as such the State was deprived of an opportunity to adduce evidence though the witnesses examined by the respondent in the said case were cross examined. It is further argued that the present suit was filed by the appellant in view of liberty given by Hon'ble the Supreme Court to establish that the judgment and decree passed in the suit filed by Smt. Lajwanti or the allegations raised in the suit filed by her in the year 1993 are based upon fraud.

Apart from the fact that the appeal has been filed after delay of 216 days, the same merits rejection.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to recapitulate that consistent findings recorded by the Courts needs intervention if they suffer from perversity or are based upon materials alien to the proceedings or failure to take into consideration materials on record which have bearing on the decision qua merits of the case.

In the case at hand, appellant failed to produce any documentary evidence to establish its plea that suit land was acquired by the State of Haryana or compensation was paid to its owner. Indisputably, the litigation initiated by Smt. Lajwanti in the year 1993, in respect of the suit land, culminated in judgment and decree dated 19.12.1997 passed by

the trial Court. Later, said decree was affirmed upto Hon'ble the Supreme Court in Civil Appeal No.1195 of 1999 titled State of Haryana Vs. Lajwanti. However, the appellant was left at liberty to file a suit in order to prove that the earlier proceedings initiated by Smt. Lajwanti were the result of fraud. As per settled position in law, a person who seeks to set aside a document or a judgment and decree on the ground of fraud has to plead facts constituting fraud. He is required to prove those allegations akin to a criminal charge beyond shadow of reasonable doubt. Counsel for the appellant has failed to point out any materials on record to substantiate plea of the appellant that the earlier proceedings initiated by Smt. Lajwanti were actuated by fraud. In this view of the matter, I find myself unable to accept contention of the appellant merely on the ground that Smt. Lajwanti sought declaration qua her ownership by filing a suit in the year 1993. I would hasten to add that there is no limitation for a true owner to seek declaration qua ownership unless the contesting party is in possession of the suit land and is able to establish that his possession has matured into a title by way of prescription. Analyzed from any angle, I do not find an error much less illegality in the impugned judgments warranting intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

SEPTEMBER 2, 2019

'D. Gulati'

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no