

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.383 of 2017 (O&M)

Date of Decision: May 20, 2019

Pawan Kumar (since deceased) through L.Rs & others

...Appellants

Versus

Hari Singh (since deceased) through L.Rs

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. S.K.Sharma, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM Nos.832-C and 833-C of 2017

For the reasons mentioned in the applications, which are supported by affidavits, delay of 390 days in re-filing and 2 days in filing the appeal is condoned.

Applications stand disposed of.

RSA No.383 of 2017

Appellant-plaintiffs have not been successful in claiming declaration of the land in dispute situated in the abadi deh of Village Mirchpur, Tehsil Narnaul.

It was alleged that the plaintiffs are joint owners in possession of the land marked by letters ABCD and the shop marked by letters EFGY by virtue of the judgment and decree dated 28.01.1995. Bhawani Shankar, father of the plaintiffs No.1 and 2, grand-father of plaintiffs No.3 to 5 and husband of defendant No.6 was the owner of the suit property. On his

demise, plaintiff Nos.1, 2 and 6 received 3/4th share, whereas Kewal Kumar, father of plaintiff Nos.3 to 5, received 1/4th share and after death of Kewal Kumar, plaintiff Nos.3 to 5 became owners in possession to the extent of 1/4th share each and had raised the construction and have been in possession of the suit property. When the plaintiffs came in Village Mirjapur, asked the defendant to vacate the land, but were confronted with the judgment and decree dated 28.01.1995 claiming himself to be owner and in such circumstances, the suit aforementioned was filed in 2002. Plaintiffs stated that plaintiff No.6 agreed to sell the property resulting into filing of suit No. 232 dated 23.04.1994 titled as “Hari Singh Versus Smt. Santra”, wherein the defendant admitted the contents of the written statement resulting into a consent decree. The objections qua limitation and maintainability were also raised.

Both the parties led evidence.

Mr. S.K.Sharma, learned counsel for the appellant-plaintiffs submitted that the Courts below have non-suited the appellant-plaintiffs on the ground that the decree required registration and suit was not maintainable in view of the provisions of Order 23 Rule 3-A CPC, but did not notice the aforementioned fact that plaintiffs No.1 to 3 were not the party, therefore, there was no bar. It is not understandable how Santra Devi suffered the decree against the interest of the plaintiffs, suit could not have been dismissed for limitation, for, it was under Article 59 of the Limitation Act.

I have heard the learned counsel for the appellants and appraised the paper book.

Plaintiff No.6 was a party in the previous suit. Suit qua her

share was not maintainable. She had already suffered a decree and filed admitted written statement resulting into passing of the decree, which, in view of the provisions of Order 12 Rule 6 CPC, in such circumstances, does not require registration. Plaintiffs have not been able to establish ignorance of the judgment and decree for such period when the defendant had been in possession of the suit property by raising the cause of action to overcome the rigors of the Limitation Act. Parties have been filing the suit by invoking the provisions of Article 59 of the Limitation As as acquisition of knowledge was two days before the suit, but the said pleadings have to be proved in accordance with law which remained a mystery. In such circumstances, dismissal of the suit was justified.

For the reasons aforementioned, no ground for interference in the concurrent findings under challenge is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

May 20, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No