

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4343 of 2017 (O&M)

Date of Decision: March 07, 2019

Naresh Kumari

...Appellant

Versus

Bhale Ram (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Amarjit Markan, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.11272-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 8 days in re-filing the appeal is condoned.

CM stands disposed of.

CM No.11273-C of 2017

Prayer in the application is for bringing on record the legal heirs of respondent Nos.1 and 2.

Allowed subject to all just exceptions. The person mentioned in Para 3 of the application is allowed to be impleaded as legal heir of respondent Nos.1 and 2 for the purpose of prosecuting this appeal only.

RSA No.4343 of 2017

The present Regular Second Appeal is directed against the judgments and decrees of the courts below, whereby the suit of the appellant-plaintiff claiming declaration that the land measuring 149 kanals 15 marlas, situated in Village Sisai Kali Ravan comprised in Khewat

No.397, Khatoni Nos.546 to 548 and land measuring 28 kanls 2-1/3 marlas comprised in Khewat No.159/155, Khatoni No.218 and 223 situated at Village Kheri Berkesh in the hands of Des Raj son of Sher Singh was ancestral and coparcenary and she being one of the coparceners, entitled to 1/5th share in the land by laying challenge to the civil court decree dated 30.10.1980 rendered in Civil Suit No.846 of 1980 titled as “Vinod & Smt.Dani Versus Des Raj & Bhale Ram”, has been dismissed.

It was alleged that Bhale Ram did not have any right/share in the aforementioned property owing to the fact that 1972 decree proved that Des Raj was the only owner.

Defendants opposed the suit and supported the decree and raised the objections qua maintainability of the suit being barred by law of limitation.

The trial Court, on the basis of the pleading of the parties, after already framed issues, re-framed the following issues on 20.09.2008:-

“1) Whether the plaintiff is entitled to the relief of declaration as well as injunction as prayed for by her with respect to the disputed land on the grounds so mentioned in the plaint? OPP

2) Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD

3) Whether the suit is barred by limitation? OPD

4) Whether the suit is not maintainable in the present form? OPD

5) Whether the plaintiff is estopped to file the present suit by her own act and conduct? OPD

6) Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD

7) Relief.”

Thereafter, the following additional issues were framed on

09.11.2009:-

“(a) Whether the suit land is HUF-Mitakshra ancestral coparcenary property and daughters have the share being coparcener in the property? OPP

(b) Whether the judgment and decree dated 20.4.1972 and 28.11.1980 are nonest, nullity, void, without consideration and legal necessities and to deprive the other coparceners, as such have no effect on the rights of the plaintiff? OPP

(c) What is share of Karta at the relevant time as per section 6 of the Succession Act? OPP

(d) Whether a Karta can sell the property, if so for what purpose, if the sale is not within those purposes, if so what its effect? OPP

(e) Whether there had been partition determining the share of the coparceners-joint Hindu Family, as alleged in the judgment and decree dated 28.11.1980? OPP

The trial Court, vide judgment and decree, set-aside the decree dated 20.04.1972 but decree dated 28.11.1980, was, confirmed and declined the relief of rendition of accounts as well as partition of the land. Appeal laid before the Lower Appellate Court was dismissed.

Mr. Amarjit Markan, learned counsel representing the appellant-plaintiff, in support of the memorandum of appeal, submitted that the decree of 1972 once conferred the right to Des Raj, Bhale Ram did not have any title and right in the property and, thus, could not have suffered the decree of half share in favour of the plaintiff in Civil Suit No.846 of 1980 resulting into impugned judgment and decree dated 28.11.1980. Plaintiff could not challenge the decree as the plaintiff was minor and attained the majority in 1986. The suit was filed in 2006 and by that time, the daughters had acquired a right in the joint Hindu Family property. There is abdication by the trial Court in upholding the decree. Once decree of 1972 was set-

aside, Bhale Ram did not have any right.

I am afraid, the aforementioned arguments are not sustainable, particularly for the fact that though the trial Court overlooked the objection of the defendants qua suit being within limitation, but there is no abdication by the Lower Appellate Court. Provisions of Section 3 of the Limitation Act (for short, the Act) do not bar any party or the court to raise the objection and deal with the same. Concededly, the plaintiff attained the majority in 1986. If she was so aggrieved, could lay challenge to the 1980 decree upto 1989, whereas the present suit had been filed only in 2006 alleging acquisition of knowledge. Articles 56 and 58 of the Act provide the period of three years for setting-aside the decree if obtained by fraud or registered document. It is very common practice amongst the litigants to take the benefit of aforementioned provisions to bring the suit within the period of limitation by alleging cause of action of having acquired the knowledge, but the courts below did not notice the aforementioned fact. Be that as it may, once the plaintiff had been successful in succession of the suit property, the claim with regard to the decree cannot be said to be having any foundation.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

March 07, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No