

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

**RSA No.5439 of 2017 (O&M)
Date of Decision.22.05.2019**

Roshini and others

...Appellants

Vs

Sher Singh (deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.P. Dhull, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs have not been successful in staking claim in the suit property seeking declaration to be joint owners in possession to the extent of 32 kanals 15 marlas out of the land measuring 227 kanals 7 marlas by challenging the judgment and decree dated 14.01.1980 passed in Civil Suit No.550 of 1979 and 30.03.1994 passed in Civil Suit No.169 of 1994. It was alleged that plaintiffs at the time of suffering of the decree were minors and not taken care by defendants No.3, 4 and 5 as they are siblings and children of late Hardwari. The beneficiaries of the aforementioned decree was defendant No.1. The factum of decree was not in their knowledge as defendants had been paying *batai* of their share and when plaintiffs demanded *batai* of their share, defendants refused. Thereafter, plaintiffs acquired knowledge about the decrees, thus, filed the suit in 2011. The decree of 1994 was allegedly on account of family settlement and could not sustain, as there can be no family settlement amongst minors.

Defendants No.2 and 6 to 29 contested the suit and alleged that as per decree, mutation No.3881 was sanctioned and recorded in the revenue record, which was in the knowledge of the plaintiffs. Brothers of the plaintiffs contested the suit by filing written statement and stated that it was their willful act and there was no element of fraud and misrepresentation. Partition was also effected amongst the co-owners by separation of specific portion of the joint land.

Both the parties led extensive evidence.

Mr. J.P. Dhull, learned counsel appearing on behalf of the appellants submitted that provisions of Order 32 Rule 3 and 4 CPC were mandatory. No permission was sought and therefore, defendants No.2 to 4 could not have entered into decree once it has been against the interest of the plaintiffs and prejudicial as well. The Courts below could not have non-suited the plaintiffs on account of limitation as the decree was actuated on fraud and to that effect there can be no limitation. Allegations of fraud are not only pleaded but proved. Ganga Bishan could not be *de facto* guardian of plaintiffs No.4 to 11 in the civil suit and the family settlement could also not be entered.

I am afraid aforementioned argument would not be sustainable, as in view of Article 60 of the Limitation Act, the limitation to challenge a decree by the minor is three years from the date of attaining majority. No proof of payment of *batai* as alleged in the plaint to cover up objection of limitation has been brought on record in order to bring the suit within the parameters governed by

Article 59 of the Limitation Act. It is common practice amongst litigants to rake cause of action by making specific pleadings which always remain unproved. The instant case is of such nature. No explanation has come forward for not assailing the decrees within three year of attaining of the majority as mutation with regard to decree had already been sanctioned and its knowledge to the plaintiffs cannot be ruled out. All these factors weighed in the mind of Courts below while non-suiting the plaintiffs.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No