

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

RSA-4982-2018(O&M)

Date of decision:-30.7.2019

Dharam Pal

...Appellant

Versus

Haryana Board of School Education, Haryana, Bhiwani

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.R.K. Malik, Senior Advocate with
Mr.S.K. Rana, Advocate for the appellant.

H.S. MADAAN, J.

This regular second appeal is directed against the judgments and decrees passed by the Courts below vide which suit of the plaintiff Dharampal, who is appellant before this Court against Haryana Board of School Education, Haryana, Bhiwani through its Secretary – defendant – respondent had been dismissed.

Briefly stated, facts of the case are that plaintiff Dharampal had brought the suit in question on the averments that in his birth certificate his date of birth is recorded as 28.12.1960 but inadvertently the date of birth mentioned in his certificates issued by the defendant – Board is 18.7.1958 which is liable to be corrected; that the plaintiff came to know about this error on 18.7.2000; that earlier also he had filed a Civil Suit No.462/2000 dated 27.11.2000, which was dismissed on 2.5.2003; that an appeal was preferred against dismissal of that suit, which was

withdrawn due to technical defects with permission to file fresh legal proceedings vide order dated 19.3.2015; thereafter Civil Suit No.61/1 of 2015 was filed. Notice of the suit was given to defendant but defendant did not appear despite service and was proceeded against ex parte.

After recording ex-parte evidence, Additional Civil Judge (Sr.Divn.), Gohana vide judgment and decree dated 15.9.2016 dismissed the suit.

Feeling aggrieved, the plaintiff had filed an appeal before District Judge, Sonapat, who vide judgment and decree dated 7.4.2018 dismissed the same.

Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing the present regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by him be decreed.

I have heard learned counsel for the appellant besides going through the records and I do not find any merit in the appeal.

Learned trial Court has quoted extensively from the judgment passed by this Court in **Ambika Kaul Versus Central Board of Secondary Education and others, LPA No.1613 of 2014 (O&M)** & LPA No.373 of 2015(O&M)(1) decided on 21.5.2015, wherein it was observed that the right to seek actual date of birth has to be exercised within three years of attaining the majority on the basis of the birth certificate issued by the Registrar of Births and Deaths. However, after expiry of period of three years from the cessation of disability, no person can rely upon the

birth certificate and he is bound by the date given in the matriculation certificate. In that way, the right of a person to seek actual date of birth on the basis of entry in the birth certificate by the Registrar of Births and Deaths is three years after attaining the majority on the basis of date of birth in the said certificate.

The trial Court had observed that in light of this legal position since as per case of the plaintiff in his birth certificate his date of birth is entered as 28.12.1960 whereas in mark-sheet of secondary examination his date of birth is mentioned as 18.7.1958, the plaintiff is estopped from claiming the instant relief on the basis of his birth certificate after three years from the date he attained majority and as such the suit was barred by limitation because counted from the actual date of birth of plaintiff the period of limitation to file suit was 28.12.1981, whereas suit was filed on 4.4.2015 and even from the date of birth recorded in the school certificate, the suit is hopelessly barred by time.

The First Appellate Court has also come to the same conclusion and I find myself in agreement with both the Courts on that point.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

It is difficult to imagine that plaintiff was not aware of date of birth entered in his school record to be 18.7.1958. Even if it is taken that since he was a minor and was not in a position to initiate steps for

correction of date of birth, he could very well do so on attaining majority. Even if his date of birth as entered in his birth certificate is taken as 28.12.1960, he attained age of majority on 28.12.1978, that means, the limitation started from that date. The suit could have been filed within three years thereof but the plaintiff kept quiet and filed the suit for the first time on 27.11.2000, which was hopelessly time barred. The case of the plaintiff is that he came to know about his wrong date of birth on 18.07.2000, which is least convincing. The plaintiff has not explained as to how, he was ignorant of his date of birth till 18.7.2000. No plausible or convincing explanation in that regard is coming forth. The plaintiff having failed to cross the hurdle of limitation, the suit was doomed for failure for that very reason.

Coming to the next ground, which formed basis for rejection of claim of the plaintiff by the Courts below, it was for the reason that the plaintiff had filed a similar suit earlier, which was dismissed. He had preferred an appeal against the said judgment, which was withdrawn. Though according to plaintiff, he had sought permission to file a fresh suit and was permitted to do so but that contention does not comes out to be correct. A perusal of the order passed by First Appellate Court in that regard, which has been reproduced in the judgment goes to show that appellant Dharampal by moving an application had sought to withdraw the appeal as well as civil suit with permission to file a fresh one by removing the technical fault in the suit and in view of said statement, the civil appeal was dismissed as withdrawn observing that appellant shall always be free to institute any legal proceedings which shall be decided as

per law. The order passed does not contain the reason for which the suit was bound to fail and no specific permission has been granted to plaintiff to file fresh suit on the same cause of action.

Order 23 deals with withdrawal of suit or abandonment of part of claim. Sub Rule 3 provides that where the Court is satisfied:

- (a) that a suit must fail by reason of some formal defect, or
- (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, then it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject- matter of such suit or such part of the claim.

In the order in question it is nowhere recorded that there was some formal defect in the suit by reason of which it must fail or there were sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of claim. No such grounds or reasons for allowing the plaintiff for granting necessary permission in that regard has been given. As a matter of fact, no permission has been granted to the appellant to file fresh suit regarding the same subject matter or part of claim. Only general observations have been made that the appellant shall always be free to institute any legal proceedings, which shall be decided as per law.

Such observations can hardly amount to grant of necessary permission as envisaged under Order 23 Rule 3 CPC. Under Sub-Rule 4, the plaintiff is precluded from instituting any fresh suit in respect of such subject matter or such part of the claim. The suit is, therefore, barred

under Order 23 Rule 4 CPC. The observations by the trial Court is that it is barred by resjudicata.

It may be added here that though it is not proved but even if it is taken that permission had been granted by First Appellate Court that would not have resulted in extension of period of limitation. Therefore, bar of limitation was always there.

Learned counsel for the appellant has referred to authorities i.e. *M/s Remy Cycle Industries & Others Versus Surinder Pal Singh and others, 2015(1) RCR(Rent)173*, *Hukam Singh and others Versus M/s Rajdhani Land and Finance and others, 2016(2) RCR(Civil)369* and *Resham Signh Versus Union of India and another, 2008(1) RCR(Civil)131*, but those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

30.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No