

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

RSA No. 6288 of 2017(O&M)

Date of decision: 13.5.2019

Nathu Ram

.....Appellant

VERSUS

Jarnail Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. L.S. Sidhu, Advocate for the appellant.

Mr. S.C. Chhabra, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 14.09.2017 passed by the Additional District Judge, Mansa whereby appeal against judgment and decree dated 19.05.2015 passed by the Additional Civil Judge (Senior Division), Sardulgarh dismissing suit of the respondent/plaintiff for declaration and permanent injunction has been allowed, judgment and decree dated 19.05.2015 were set aside and suit filed by the respondent/plaintiff for declaration and permanent injunction was allowed in terms, recorded in penultimate para No.21 of the judgment passed by the Appellate Court.

The order of notice of motion dated 30.01.2018 reads as follows:-

“Counsel for the appellant inter alia contends that suit filed by the respondent/plaintiff to assail sale deed No.885 dated 10.6.1996 filed in the year 2012 was dismissed by the trial court and the question qua limitation to file the suit was answered against the respondent/plaintiff. The Court in Appeal set aside the judgment and decree dated 19.5.2015 passed by the trial court without advertng to the question of

limitation much less reversing findings of the trial court on the question of limitation.

Notice of motion for 23.5.2018.

In the meantime, operation of the judgment passed by the Court in Appeal shall be kept in abeyance.”

Counsel for the respondent/plaintiff is not in a position to dispute the factual error committed by the Appellate Court that the Appellate Court without setting aside findings of the trial Court that the suit is barred by limitation has reversed the judgment and decree passed by the trial Court and decreed the suit of the respondent/plaintiff. In the given circumstances, judgment and decree passed by the first Appellate Court cannot be allowed to sustain and merits to be set aside. However, the matter needs to be remitted to the Appellate Court for decision of the appeal afresh by adverting to findings of the trial Court on all the issues including the question of limitation.

In view of what has been discussed hereinbefore, the appeal is partly allowed. Judgment and decree passed by the Appellate Court are set aside and the matter is remitted to the first Appellate Court for decision of the appeal afresh in the terms indicated hereinbefore.

The parties through their counsel are directed to appear before the first Appellate Court on 08.07.2019.

The first Appellate Court shall dispose of the appeal within a period of 3 months of the parties putting in appearance. No order as to costs.

MAY 13, 2019

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no