

RSA-822-2017 (O&M)

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

RSA-822-2017 (O&M)

Date of decision : 11.03.2019

Ajit Singh

... Appellant

Versus

Rajinder Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-1806-C-2017

For the reasons stated in the application, which is supported by
an affidavit, delay of 12 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The appellant-plaintiff has not been successful before the
Courts below, even by seeking amendment of the plaint and permission to
withdraw the suit to file fresh one, at appellate stage.

In the suit filed in the year 2007, the plaintiff challenged the
decree dated 27.02.1990 suffered by him in favour of defendant No.1, on
the basis of the fraud and misrepresentation. It was alleged that the
property, in question, was ancestral/coparcenary of the plaintiff and
defendant No.2 and defendant No.1, who is none-else, but widow of other
son Avtar Singh, in such circumstances, had no right.

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Defendant No.1 contested the suit by raising all possible preliminary objections and said to be volunteer and willful act of the plaintiff and raised the question of limitation as well. It was alleged that the decree was passed on account of acknowledgment of the family settlement.

Defendant No.2 and 3 filed the separate written statement and opposed the suit.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law as there is no limitation for asserting the right in the property, on the basis of the title. The decree was not sustainable for want of registration. The nature and character of the property at the hands of the plaintiff-Ajit Singh, was ancestral as he was holding of 3rd generation. Even before the lower Appellate Court, two applications were filed, which have erroneously been dismissed.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Akshay Bhan, for the simple reason that the plaintiff though suffered a decree of 1990, did not assail it, for almost 17 years. The decree is not in favour of any third party, but widow of his son. It appears to be under the pressure of other living son i.e. defendant No.2. Be that as it may, widow or the son had pre-existing right and therefore, it did not require registration. No evidence with regard to the nature and character of the property being coparcenary, has been established on record, therefore, it cannot be said to be coparcenary/ancestral.

As an upshot of my finding, I do not subscribe to the

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submissions of Mr. Akshay Bhan, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

11.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**