

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.826 of 2017 (O&M)

Date of Decision: March 28, 2019

Govind Ram

...Appellant

Versus

Shiv Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. R.S.Sangwan, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff has not been successful in a suit filed on 18.08.2006 for possession by way of partition, declaration, rendition of accounts and perpetual injunction by assailing judgment and decree dated 14.03.1980 pertaining to the property, to be wholly illegal and void.

It was alleged that Hazari Lal and Shiv Kumar sons of Prahlad Rai were owners of the property. After the death of Hazari Lal, plaintiff had 1/9th share in the suit property. Plaintiff, in the year 2006, was astonished to notice that by virtue of the impugned decree, his brother, i.e., son of Hazari Lal, on his demise, in a suit No.112 dated 03.04.1979, vide Ex.PX, compromised the matter with Shiv Kumar as it seriously prejudiced the right of the plaintiff.

Defendant opposed the suit and raised the objections of maintainability and jointness of the property on the premise that the decree had already conferred the right upon the beneficiary, i.e., Shiv Kumar. Even

brother of the plaintiff supported by the case of the contesting defendant, i.e., defendant No.1.

Plaintiff, in support of the evidence, examined seven witnesses and placed on record many documents, including Ex.PA to Ex.PK, whereas, the defendant examined two witnesses and also brought on record documents Ex.D1 to Ex.D23.

Mr. R.S.Sangwan, learned counsel appearing on behalf of the appellant-plaintiff submitted that during the pendency of suit No.112 of 03.04.1979 titled as “Hazari Lal Versus Shiv Kumar”, Hazari Lal died on 02.02.1980 and the interest of the plaintiff, who was minor at that time, was not protected and the compromise was arrived at by his brothers, i.e., defendants No.2 to 8, neither any permission for appointment of the guardian was taken, therefore, the decree was not sustainable. The property was ancestral and could not have been given to Shiv Kumar in the aforementioned decree.

I am afraid, the aforementioned argument is not sustainable, for, if at all the property was coparcenary Article 110 of the Limitation Act (for short, the Act) provides limitation of 12 years. The decree is of 1980, whereas the present suit was filed in 2006 assuming the property to be self-acquired and the plaintiff being minor. It has not been proved on record as to in which year, attained the majority, for, as per sub-clause (a) of Article 60 of the Act, the limitation is 3 years from the date of majority. Through a specific query raised, learned counsel apprised this Court that the plaintiff, at the time of filing of the suit, was aged 33 years. No explanation has come in not filing the suit within time. It is not the case where the cause of action can be extended from the date of the acquisition of the knowledge.

On going through the decree Ex.D5, estate of Hazari Lal was represented by all the legal representatives. Even the appellant-plaintiff was also represented through the guardian as referred to therein. As per the Division Bench judgment of this Court in **Sardara Singh & Anr. Versus Harbhajan Singh & Ors., 1974 PLJ 341**, the estate of deceased can be represented by few of the legal representatives and there was no need to implead all the legal representatives, particularly when no prejudice has been caused during all this period.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact, which are based upon 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 28, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No