

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

Sr. No.125

**Regular Second Appeal No.265 of 2021 (O&M)
Date of Decision : September 23, 2021**

Raghbir and others

...Appellants

Versus

Ram Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vivek Khatri, Advocate, for the appellants.

SUDHIR MITTAL, J. (ORAL)

The first respondent instituted a suit dated 07.04.2010 for declaration of his title being the successor-in-interest of Sunheri daughter of Para by virtue of civil Court decree dated 12.05.1988 passed in Civil Suit No.311-C-1988. It was also prayed that judgment and decree dated 22.07.1987 passed in Civil Suit No.344-C-1987 as well as judgment and decree dated 17.08.1988 passed in Civil Suit No.400-C-1988 were illegal and liable to set aside. The suit has been decreed by the Courts below and thus, the defendants are in second appeal.

Chandgi and Devtia were sons of one Ballu. Chandgi was survived by Bhartha, Lilu and Para whereas Devtia was survived by Mange, Peerdan and Ratia. The plaintiff is Ram Kumar son of Peerdan and the defendants are the sons of Mange. Dispute is regarding property inherited by the plaintiffs and defendants from the successors-in-interest of Chandgi. The said persons had suffered various civil Court decrees in favour of the parties from time to time. The first of these decrees is dated 09.08.1983 in Civil Suit No.584-C-1983 wherein Bhartha and Lilu gave Sunheri 1/3rd

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share in property of Chandgi. On 22.07.1987, the defendants in this suit succeeded to the property of Bhartha and Lilu vide collusive decree passed in Civil Suit No.344-C-1987. Thereafter, plaintiff and his brother Ram Sarup succeeded to the property of Sunheri vide Civil Court decree dated 12.05.1988 passed in Civil Suit No.311-C-1988. The decree dated 09.08.1983 was set aside vide decree dated 17.08.1988 passed in Civil Suit No.400-C-1988 filed by Bhartha and Lilu against Sunheri.

The Courts below have held that despite decree dated 09.08.1983 having been set aside vide decree dated 17.08.1988 passed in Civil Suit No.400-C-1988, plaintiff of this suit remained owner of 1/3rd share of Sunheri acquired vide decree dated 12.05.1988 passed in Civil Suit No.311-C-1988 because on the date of passing of decree dated 17.08.1988, Sunheri was not left with any right, title or interest in the suit property and thus, she could not suffer a decree in favour of Bhartha and Lilu.

It is the contention of learned counsel for the appellants that the present suit was barred by limitation having been instituted on 07.04.2010. Period of limitation prescribed for challenging a judgment and decree is three years from the date of passing thereof and the plaintiff-respondent No.1 was well aware of the said judgments and decrees as they were referred to in Civil Suit No.366 of 1988 filed by the present defendants for seeking injunction against the present plaintiff. Moreover, in the said suit an issue regarding the legality and validity of judgments and decrees passed in Civil Suit No.344-C-1987 and Civil Suit No.400-C-1988 was framed. Even though the suit was dismissed, issue regarding the legality and validity

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of the aforementioned decrees was decided in favour of the present defendants. Thus, the present suit is also barred by res judicata.

A perusal of the decree passed by the trial Court shows that only a declaration regarding the title of the plaintiff-respondent No.1 has been granted. The judgments and decrees passed in Civil Suit No.344-C-1987 and Civil Suit No.400-C-1988 have not been set aside. This shows that for the purposes of declaration of title, there was no requirement of setting aside the judgments and decrees challenged in the suit. In fact, they have not been set aside as is proved by the decree of the trial Court. Thus, it is erroneous to argue that the suit is barred by limitation. Despite the existence of the aforementioned judgments and decrees, plaintiff-respondent No.1 was entitled to the declaration sought as Sunheri had no right, title or interest left in the suit property on the date the decree was suffered by her in Civil Suit No.400-C-1988. Thus, argument regarding limitation is rejected.

In the suit for injunction i.e. Civil Suit No.366-C-1988 filed by the present defendants, the parties as also the suit property, may have been the same, but the matter substantially in issue in the said suit was not in issue in the present suit. The earlier suit was for grant of an injunction whereas the present suit is a title suit and thus, the principle of res judicata would not bar the present suit. Framing of an issue regarding the legality and validity of judgments and decrees dated 22.07.1987 and 17.08.1988 would not be sufficient to hold that the matter directly and substantially in issue in the earlier suit was also directly and substantially in issue in the present suit. The matter substantially under consideration in the present suit was effect of the aforementioned judgments and decrees upon the title

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of the plaintiff-respondent No.1. Thus, the argument raised on principle of res judicata is also rejected.

For the aforementioned reasons, the appeal has no merit and is dismissed.

CM Nos.1695-C-2021

Since the main case stands dismissed, the present application
CM No.1695-C-2021 is also dismissed.

September 23, 2021

Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes