

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

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**RSA-1320-2021(O&M)
Date of Order: 23.11.2021**

**KHAJAN SINGH SINCE DECEASED THROUGH ITS LRS AND
OTHERS**

..Appellants

Versus

STATE OF HARYANA AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Jain, Advocate
for the appellants.

Mr. Samarth Sagar, Addl. AG, Haryana.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The plaintiffs (appellants herein) assail the correctness of judgment and decree passed by the Additional District Judge, Faridabad.

Some facts are required to be noticed.

The plaintiffs filed a suit claiming that they along with the proforma defendants were owners in possession of a land measuring 83 kanals and 4 marlas situated within the revenue estate of Village Badrola, Tehsil Ballabgarh, District Faridabad. At the time of the partition of the land, demarcation took place and it was found out that the respondent-State of Haryana has encroached upon a certain part of their land. The plaintiffs after serving a notice on 01.04.2013, filed a suit for grant of decree of mandatory injunction directing the respondents to remove the road. The defendants contested the suit with the assertion that the PWD department has constructed the *pucca* Tigaon-Kurali-Atali Road in the year 1971, over the existing *kacha* road. It was asserted that the road was constructed with the consent of the villagers and owners.

The trial Court decreed the suit whereas the First Appellate Court has reversed the aforesaid decree. The First Appellate Court has found out that the suit filed by the plaintiff is barred by limitation. The Court while relying upon the deposition of the plaintiff as well as PW3 Javinder has held that the plaintiffs were in knowledge of the construction of the road and as the suit has been filed after a period of 45 years, therefore, it is barred by time.

Heard the learned counsel representing the appellants at length and with his able assistance perused the judgments passed by the Courts below.

The learned counsel representing the appellants contend that in the present case, the suit would be governed by Article 113 of the Schedule attached to the Limitation Act. He further contends that the limitation of 3 years to file a suit for mandatory injunction would begin to run when the right to sue accrues. He while relying upon the judgment passed by the Hon'ble Supreme Court in **Shakti Bhog Food Industries Vs. Central Bank of India and another, Civil Appeal No.2514 of 2020**, decided on 05.06.2020, contends that the expression when the “right to sue accrues” does not mean that when the right to sue first accrues. He, hence contends that the First Appellate Court has erred in accepting the appeal.

This Court with the assistance of the learned counsel representing the appellants has carefully read the judgment passed by the Hon'ble Supreme Court in **Shakti Bhog Food Industries(supra)**. In that case, the appellants have filed a suit on 23.02.2005, for a decree of rendition of true and correct accounts in respect of the interest/charge, deducted by the Bank from the current account of the plaintiff. The trial Court as well as the First Appellate Court rejected the claim under Order 7 Rule 11 CPC on the ground that the suit is barred by limitation. In that context, the Hon'ble Supreme Court interpreted Article 113 of the Schedule, held that legislature has consciously drawn a distinction

the act and the language contained in Article 113, as Article 113 did not refer to happening of any specific event. Articles 58, 59 and 104 are distinct in language to Article 113.

In the considered view of the Court, the plaintiffs had the knowledge of the construction of the road in the year 1970, therefore they cannot claim that they came to know about the encroachment only in the year 2013. The plaintiffs have admitted that they have been continuously travelling on the road for quite some time. The learned counsel representing the appellants admit that the road was laid out after acquisition of the land in the year 1951. The appellants only claim that while constructing the road, some part of their land has been encroached upon. The aforesaid alleged encroachment is in the knowledge of the appellants from 1970. The “cause of action” is based upon the collective facts of the case. The cause of action for filing the suit in the facts of the present case cannot be solely based on demarcation of the land at the time of partition of the property. The plaintiffs were co-owners even before the partition of the property.

Hence, the appellants cannot claim that they came to know of the encroachment only on the demarcation of land during the partition proceedings. The plaintiff has filed the suit for a grant of mandatory injunction which is governed by Article 113 of the Schedule attached to the Limitation Act. It provides that the limitation for filing such suit is 3 years. The plaintiff has neither filed the suit for possession or claimed compensation. The learned First Appellate Court has already observed that the appellants can file a suit for recovery of compensation.

In view thereof, no ground to interfere is made out.
Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

November 23, 2021

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No