

RA-RS-40-2021(O&M) in
RSA-3952-2015

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

RA-RS-40-2021(O&M) in
RSA-3952-2015
Date of decision:-20.1.2023

Maru Ram through his LRs Sadhu Ram and others

...Review Applicant/Appellants

Versus

Banwari Lal through his LRs Munna Lal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Pritam Saini, Advocate
for the applicant/appellants.

Mr.M.L. Sarin, Sr.Advocate with
Ms.Hemani Sarin, Advocate for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Maru Ram through his LRs and Heera Ram had brought a suit for declaration and permanent injunction against Banwari Lal and others to the effect that they are owners in possession on the basis of will bearing No.75 dated 9.12.1988 executed by Sh.Jhutha Ram in favour of the plaintiffs. That suit was contested by the defendants. Ultimately, the suit of the plaintiffs was dismissed and counter claim of the defendants was allowed declaring them as owners in possession of the property in question in view of mutation of inheritance of Sh.Jhutha Ram by natural succession by the

trial Court vide judgment and decree dated 1.3.2011.

2. The plaintiffs had challenged the judgment and decree passed by the trial Court before District Judge, Narnaul by filing an appeal, who vide judgment and decree dated 26.3.2015 dismissed the same.

3. Still feeling dissatisfied the plaintiffs had preferred a Regular Second Appeal before this Court, notice of which was given to the respondents, who put in appearance and vide judgment dated 20.5.2019 the impugned judgments and decrees passed by the Courts below were upheld, whereas the appeal filed was dismissed.

4. The judgment passed in Regular Second Appeal was challenged by the plaintiffs before Hon'ble Supreme Court, which had passed order dated 17.12.2019, which for ready reference is being reproduced as under:

Learned Senior counsel for the petitioner seeks to contend that they had raised the issue of the right of the petitioner as a co-parcener, dehors the aspect of Will which has not been examined in the impugned judgment and that it was not so contended.

If the aforesaid being the position, naturally, the only appropriate remedy for the petitioner would have been to file the Review Petition.

Learned senior counsel thus seeks to withdraw this petition with liberty to approach the High Court seeking review of the order on the aforesaid limited aspect.

Liberty granted subject to the condition that such a plea was ever raised before the High Court.

The special leave petition is dismissed as withdrawn in terms aforesaid.

5. Accordingly, the appellants/plaintiffs have filed the present review application. Along with that an application under Section 5 of the Limitation Act for condonation of delay has been filed.

6. Notices of those applications were given to the respondents, who put in appearance through counsel filing reply to the application under Section 5 of the Limitation Act.

7. I have heard learned counsel for the parties besides going through the record.

8. Firstly coming to the application under Section 5 read with Section 14 of the Limitation act for condonation of delay. The reason given for belated filing of the application is that the review application could not be filed immediately after passing of order by the Apex Court since brief of the case was not made available to the counsel through whom the present application has been filed and the brief was handed over to him in the month of April, 2020, however the application could not be re-filed thereafter due to Covid-19 Pandemic as even the ordinary cases were not being permitted to be filed and heard by this Court. Furthermore, the appellants are seeking review of the order dated 20.5.2019, which has subsequently been merged with the order dated 17.12.2019 and if the limitation is counted from the date of order passed by the Apex Court, there would hardly be a delay of 6 days in filing of the application, which is not intentional and was due to prevailing circumstances.

9. Although the reasoning given does not come out to be very plausible and satisfactory but even then in interest of justice, I proceed to decide the application for review on merits, rather than dismissing it on threshold for the reason of having not been filed within period of limitation.

10. The order passed by the Apex Court goes to show that liberty was granted to applicants/appellants to approach this Court seeking review of the order for the reason that though plea with regard to right of the petitioner as coparcener was raised before this Court during arguments but that aspect was not examined in the judgment passed by this Court.

11. However, as has been rightly pointed out by learned counsel appearing for the respondents, the appellants had not challenged the judgment passed by the First Appellate Court accepting the counter-claim of the defendants and this plea was never taken in the grounds of appeal. Furthermore, no submission in that regard had been made during the course of final arguments.

12. Though learned counsel appearing for the applicant/appellants has tried to justify the filing of application stating that this Court has not considered the aspect that appellants happened to be coparceners in the property in suit while deciding the question of inheritance of Sh.Jhutha Ram. However, when learned counsel for the applicant/appellants was asked to point out as to where such plea was taken in the grounds of appeal and at what stage and in what manner submissions in that regard had been made before this Court during arguments, he was unable to do so.

13. If that plea had not been raised then there was no occasion for dealing with the same by this Court in the judgment passed. Furthermore, no ground is made out to review the judgment on any account.

14. The application is totally misconceived and stands dismissed accordingly.

20.1.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No