

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

(108)

**RSA No.4196 of 2019
Date of Decision: 18.07.2023**

Parth Singh

.....Appellant

Versus

Sh. Jagat Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashok Kumar Khubbar, Advocate, for the appellant.

HARKESH MANUJA, J.(ORAL)

1. By way of present appeal, challenge has been made to the judgment and decree dated 01.05.2019 passed by the Court of Additional District Judge, Faridabad whereby, judgment and decree dated 19.03.2013 passed by the Civil Judge (Jr. Divn.), Faridabad, has been set aside by allowing the first appeal, thereby resulting into dismissal of suit for declaration and permanent injunction filed by the appellant/plaintiff.

2. In the present case, the dispute relates to a judgment and decree dated 19.07.1986 suffered by the father of the parties namely Ghurey Lal in favour of his two sons i.e. defendants No.1 and 2. By way of filing suit for declaration as well as permanent injunction, the appellant/plaintiff questioned the validity of the aforementioned judgment and decree dated 19.07.1986, primarily on the ground that the suit property was ancestral in nature in the hands of their father namely Ghurey Lal who thus, had no right to alienate the same beyond his share. It was further pleaded that decree dated 19.07.1986 could not have been passed without impleading the appellant/plaintiff as party being one of the co-sharers, besides, disputing the factum of any family settlement as well.

3. On the other hand suit was contested. It was stated in the written statement that the judgment and decree dated 19.07.1986 was validly passed being based upon a family settlement. Even the nature of the suit property being ancestral was also disputed besides challenging the suit being barred by limitation. The learned trial Court vide its judgment and decree dated 19.03.2013, decreed the suit in favour of appellant/plaintiff while holding the suit property to be ancestral in the hands of Ghurey Lal.

4. Aggrieved thereof, respondents No.1 and 2 filed first appeal which came to be allowed vide judgment and decree dated 01.05.2019 passed by the Court of Additional District Judge, Faridabad, primarily on the ground that the suit filed at the instance of respondent No.1 on 23.02.2007, challenging the judgment and decree dated 19.07.1986 passed in Civil Suit No.389 dated 17.07.1986 was barred by limitation.

5. I have heard learned counsel for the appellant and gone through the paper book.

6. In the present case, a positive finding has been recorded by both the Courts below that the suit property in the hands of Ghurey Lal was ancestral in nature. In view thereof, the alienation of a part of property thereof by Ghurey Lal, vide judgment and decree dated 19.07.1986, was required to be assailed within a period of 12 years as per Article 109 of the Limitation Act, 1963, from the date when the alienee took possession of the property as provided therein. Article 109 of the Limitation Act is reproduced hereunder:

Description of suit	Period of limitation	Time from which period begins to run
By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property	12 years	When the alienee takes possession of the property.

was passed in favour of respondent No.1 and 2 in a Civil Suit bearing No.389 dated 17.07.1986 titled as Jagat Singh and another Vs. Ghurey Lal, and based thereupon mutation No.6131 dated 22.11.1986 was entered in their name thereby recording them to be as owner in possession of the suit property. Once the possession of the suit property was taken over by respondents No.1 and 2 in pursuance to mutation No.6131 dated 22.11.1986 then any suit challenging the alienation made by Ghurey Lal as regards the ancestral property was required to be challenged within 12 years thereafter whereas in the present case suit challenging the decree dated 19.07.1986 came to be filed in February 2007 which was thus clearly barred by limitation as prescribed under Article 109 of the Limitation Act, 1963. On the contrary no documentary evidence has been brought to my notice about the possession of the suit property being retained by appellant during all this while.

8. Resultantly, I do not find any illegality or perversity in the judgment passed by the first appellate Court, which though, rightly dismissed the suit being barred by limitation, however, went stray while recording that the same was required to be filed within 3 years. Accordingly, I do not find any question of law much less substantial question of law which falls for consideration of this Court in the present appeal. Hence, the present appeal is dismissed accordingly.

(HARKESH MANUJA)
JUDGE

18.07.2023
anil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No