



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-698-2000 (O&M)

Reserved on: 08.07.2025

Pronounced on: 10.07.2025

ADU RAM AND OTHERS

. . . . APPELLANTS

Vs.

RAM SINGH

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ashwani Talwar, Advocate, for the appellants.

Mr. Jivesh Malik, Advocate, for the respondent.

DEEPAK GUPTA, J. (ORAL)

It is plaintiffs' appeal against reversal. Plaintiffs are real brothers, whereas the sole defendant-Ram Singh (*respondent herein*) is their father's real nephew. Plaintiffs sought decree of declaration to the effect that they are owner of the suit land detailed in headnote of the plaint. They assailed judgement & decree dated 02.06.1989 passed by the then Sub Judge 1st Class, Panipat in Civil Suit No. 375 of 1989 to be null, illegal and void. They also prayed for decree of possession of the suit land along with the relief of permanent injunction to restrain the defendant from alienating the suit property.

2. As per the case set up by the plaintiffs, in April 1989, they had leased out the suit property to the defendant for a period of 5 years w.e.f. 1988-1989 to 1993-1994 for consideration of ₹7,000/-. Due to close relationship, lease deed was not executed. Possession was delivered to the defendant in the month of April 1989. Later on, defendant asked the plaintiffs to get the lease deed executed in his favour. On that pretext, plaintiffs accompanied the defendant to the Court premises in the first week of June 1989, where their thumb impressions were obtained by a counsel engaged by the defendant. In the month of March 1994 after the

expiry of the lease period of 5 years, plaintiffs requested the defendant to hand over the possession of the suit land, whereupon defendant claimed ownership of the suit land on the basis of the impugned decree. It was claimed by the plaintiffs that they never suffered the impugned decree and that the said decree is the result of fraud and misrepresentation, as they never intended to transfer the suit property in favour of the defendant. They had never engaged any counsel. They are not members of the Joint Hindu Family. Suit land was earlier owned by their father and after his death, it was inherited by them and there was no family settlement ever effected amongst the parties.

3. Refuting the claim of the plaintiffs, defendant raised various preliminary objections. They denied that plaintiffs ever leased out the suit land to him. According to defendant, in a family settlement, suit property had fallen to his share and as such, he had become owner in possession of the same by virtue of the judgement & decree dated 02.06.1989, which was rightly suffered by the plaintiffs in his favour. The said judgement & decree was legally passed. Plaintiffs had attended the Court, engaged their counsel, admitted the claim by way of written statement and also got their statement recorded in the Court by admitting the claim of the defendant and that no fraud whatsoever was played upon them. Since the date of family settlement, plaintiffs were aware of the fact that defendant was in possession of the suit land. Defendant also raised the objection regarding limitation, submitting that since beginning, plaintiffs were very much aware about the impugned judgement & decree and therefore, suit brought in 1994 was barred by limitation.

4. Necessary issues were framed. Evidence produced by the parties was taken on record.

5. The Trial Court concluded that the parties did not constitute a Joint Hindu Family and that the defendant had no pre-existing right in the suit property. It further held that the impugned judgment and decree dated 02.06.1989 created rights and title in immovable property in favour

of the defendant for the first time, and therefore, it was compulsorily registrable. Since the decree was not registered, it was declared illegal and invalid. At the same time, the Trial Court found that the plaintiffs had failed to establish the allegation of fraud allegedly committed against them. Based on these findings, the impugned judgment and decree were held to be unenforceable for want of registration, and the suit was decreed in favour of the plaintiffs-appellants. They were also granted the relief of possession.

6.1 The defendant, aggrieved by the said judgment, preferred an appeal. The First Appellate Court affirmed the Trial Court's findings that although the parties shared close relations, there existed no joint family nor any pre-existing right of the defendant in the suit property, as the families were separate. It also concurred with the view that the impugned decree conferred rights in immovable property upon the defendant for the first time and, being unregistered, was invalid. The Appellate Court further upheld the finding that the plaintiffs had failed to prove the plea of fraud.

6.2 However, it was noted by the Appellate Court that the issue of limitation had not been raised before the Trial Court but was argued in appeal. It was observed that the impugned consent decree was passed on 02.06.1989, and thus the limitation period to challenge it was three years from the date of its passing. Since the plaintiffs failed to prove any fraud, it was held that they were fully aware of the decree. Consequently, the suit filed in 1994 was clearly barred by limitation. Therefore, on the ground of limitation, the suit was dismissed, thus accepting the appeal of the defendant.

7.1 Assailing the aforesaid findings, it is contended by learned counsel for the appellants-plaintiffs that learned Appellate Court has affirmed all the findings of the trial Court except the issue of limitation. Learned counsel contends that the question of limitation is a mixed question of law and fact and therefore, it could neither be raised for the first time before the First Appellate Court nor any issue was framed in this

regard. It is also argued that since the impugned decree was vitiated by fraud, the plaintiffs were not aware about the same and that they came to know about the same only in March 1994, when they asked for the possession of the suit property after expiry of the lease period and when the defendant asserted his ownership.

7.2 Learned counsel has referred to ***Salim D. Agboatwala and others Vs. Shamalji Oddhavji Thakkar and others, 2021 (3) Law Herald (SC) 1991***, wherein it was held by Hon'ble Supreme Court that limitation is a mixed question of law and fact and therefore, answer to the issue regarding limitation depends upon the evidence with regard to the issuance and service of notice and knowledge of the plaintiffs and as such, the trial Court as well as High Court were not right in rejecting the plaint on the ground of limitation.

7.3 With these submissions, learned counsel prayed for setting aside the judgement passed by the First Appellate Court and to restore the judgement of the trial Court.

8. Refuting the above contentions, learned counsel for the respondent-defendant pointed out that both the Courts have given concurrent finding to the effect that plaintiffs had failed to prove any fraud practised upon them. Learned counsel submits that once it is so, the suit was clearly barred by limitation, as the said issue of limitation can be raised at any time. Learned counsel has referred to ***R. Nagaraj (dead) through Lrs and another Vs. Rajmani and others, 2025 AIR Supreme Court 2215***, wherein it was held by Hon'ble Supreme Court that failure to frame a specific issue on limitation is not fatal, where evidence has been led and no prejudice has been caused to the parties. With these submissions, learned counsel prayed for dismissal of the appeal.

9. This court has considered submissions of both the sides and have appraised the record carefully.

10. Although there is concurrent finding of fact that impugned decree dated 02.06.1989 is bad for want of registration, but the plaintiffs-appellants have been non-suited on the ground that suit is barred by limitation. The contention of counsel for the appellants is that as the appellants were not aware about the impugned decree dated 02.06.1989 and they came to know about the same only in March 1994 when they asked for possession of the suit land after expiry of the lease deed, therefore, the period of limitation shall start from the date of their knowledge i.e. in March 1994 and so suit is within limitation and that when an Appellate Court committed error to hold the suit to be barred by limitation.

11. After going through the entire paper book and the trial Court record, this Court does not find any merit in this contention.

12. Plaintiffs contend that they had leased out the suit property for a period of 5 years from 1988-1989 to 1993-1994 to the defendant, but the lease deed was not executed and rather they were brought to the Court in March 1989 for getting the lease deed executed, but in the garb of the same, the judgment and decree was got passed. There is absolutely no evidence to support this contention. There is no lease deed on record. There is no revenue entry. Had there been a lease deed or the impugned judgment and decree dated 02.06.1989 were passed on the pretext that these were the lease documents, plaintiffs must have checked the revenue record in order to see as to whether any mutation regarding the lease was sanctioned or not. There is no such evidence to prove the said allegation. Apart from this, there is concurrent findings of Courts recorded by the Courts below to the effect that on filing of the suit for declaration by the defendants, the defendants appeared in the Court, they engaged their own counsel, they made statement admitting the entire claim of the plaintiff-Ram Singh i.e. respondent herein. Not only this, they made statement before the Court admitting the entire claim of Ram Singh and they were duly identified by their counsel. In these facts and circumstances, when plaintiffs themselves appeared in the Court, engaged their counsel, filed the written statement and admitted the entire claim of

Ram Singh i.e. the defendant of the present case, heavy onus lied upon the plaintiffs so as to prove fraud or misrepresentation, but they utterly failed to prove the same.

13. There is absolutely no reason for this Court to disturb the said concurrent findings of facts as recorded by the Courts below which is found to be based upon proper appreciation of evidence on record.

14. Once it is established that the impugned judgment decree dated 02.06.1989 is not the result of fraud and misrepresentation as plaintiffs failed to prove the said allegation, obviously, they cannot claim that they came to know about the judgment decree dated 02.06.1989 in March 1994. The knowledge of the said decree dated 02.06.1989 is to be taken from the date of the decree itself. In such circumstances, the present suit filed in April 1994 has been rightly held by the First Appellate Court to be barred by limitation.

15. In view of the aforesaid discussion, this Court does not have any reason to take a different view than taken from the First Appellate Court. It has been rightly concluded that suit is barred by limitation. Consequent to the above discussion, it is held that there is no merit in the present appeal. Consequently, the appeal is hereby dismissed by maintaining the judgment as passed by the First Appellate Court.

(DEEPAK GUPTA)
JUDGE

10.07.2025
Vivek

Whether speaking/reasoned	: Yes
Whether reportable	: No