



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 108 of 2018 (O&M)

Date of Decision: 15.05.2025

Raja Ram and Another

... Appellant(s)

Versus

Sharda Rani

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjiv Gupta, Advocate
for the appellant(s).

Mr. Gurmeet Singh Saini, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The defendants assail the correctness of the First Appellate Court's order directing the Trial Court to restore and proceed with the suit. In fact, the plaintiff-Sharda Rani filed a suit for possession in respect of her 1/3rd share in the land measuring 113 kanals 16 marlas situated in revenue estate of village Mithi Sureran, Tehsil Ellenabad, District Sirsa. The defendants filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") to reject the plaint at the threshold which was allowed by the Trial Court. However, the First Appellate Court found that the question as to "whether the suit was filed within the prescribed period of limitation? is a mixed question of law and fact. Hence, the Trial Court has wrongly rejected the plaint.

2. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

3. The learned counsel representing the appellants, while referring to paras 12 and 15 of the plaint, submits that the cause of action to file a suit as asserted by the plaintiff, arose for the first time in September 2013,

whereas the suit was filed on 10.10.2016, which was beyond the period of three years. He further submits that a previous suit was filed by Ram Kumar, brother of the plaintiff, in which she was the defendant. Subsequently, Ram Kumar entered into settlement before the Lok Adalat but the plaintiff never filed any application for transposition as plaintiff in the aforesaid suit.

4. This Court has considered the submissions of the learned counsel representing the parties.

5. The plaintiff's suit is for possession and not for declaration. At this stage, only the contents of the plaint are required to be examined. Moreover, it is for the defendants to prove that the plaintiff is estopped from filing the suit or not.

6. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order passed by the First Appellate Court. Hence, the present appeal is dismissed. However, it shall be open to the defendants to take all the objections before the Trial Court which shall be decided uninfluenced by the observations made in the impugned order or the order passed by this Court

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 15, 2025
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No