

**IN THE COURT OF ABHISHEK PHUTELA, ADDL. CIVIL JUDGE
(SR. DIVN.), GURUGRAM.
UID Code No. HR0220.**

CNR No.HRGR02-003307-2015

CIS No. APP-197-2015.

**Application for recalling the Order, Judgment and Decree dated
03.12.2005 and Decree Dated 03.04.2006 as well as
application u/s 5 of the Limitation Act.**

Date of Order: 12.09.2017.

Presence: Sh. Kanwal Kishore Sharma, Counsel for applicant-defendant.
Sh. P.C. Jain, Counsel for respondent / plaintiff No.1.
Sh. B.S. Yadav, Counsel for respondent / plaintiff No.2.

Order:-

1. This is to dispose of an application for recalling the Judgment and decree dated 03.12.2005 and decree dated 03.04.2006 passed by the Court of Ms. Rachna Gupta, the then Ld. Civil Judge (Jr. Divn.), Gurgaon as well as application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay in filing the application.
2. Tersely put, the applicant / Smt. Premwati has averred that the decree is illegal, null and void because it is the result of fraud and misrepresentation and that she was called to Gurgaon on the pretext that she will get the share of her husband transferred in her favour and for that her presence is required. It is alleged that her signatures were obtained on various documents by way of mis-representation and the same were never read over or explained to her in Hindi. She claimed that she never engaged any counsel and never signed any Vakalatnama. She alleged that no family settlement has taken place and she never gave her share to anyone. It is also contended that said

decree is not registered as per law and the compromise is also against the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It is also averred that award passed by the Lok Adalat is nonest and outside its jurisdiction. It is contended that even applicant came to know about the forged judgment and decree in the year 2010 when she went in the Office to collect the compensation regarding the acquired land, where she was told that the land does not exist in her name. It is stated that on the wrong advice of her counsel she filed a suit which was dismissed by the Court of Sh. Sachin Yadav, the then Ld. Civil Judge (Jr. Divn.), Gurgaon vide Judgment and Decree dated 26.09.2014 and thereafter the appeal was also dismissed by the Court of Sh. Harnam Singh Thakur, Ld. District Judge, Gurgaon vide Judgment and Decree dated 19.08.2015 and it is only thereafter applicant contacted some other Advocate for filing the RSA in the Hon'ble High Court and she was rather advised to file the present application.

3. In the application under Section 5 of the Limitation Act, it is contended that the applicant is an illiterate, widow lady and she should not be made to suffer for the acts of her counsel.

4. In response, the plaintiffs resisted the applications by filing a separate replies to the application for recalling the Judgment and Decree as well as to the application u/s 5 of the Limitation Act. It is averred that the application is not maintainable and that the applicant has suppressed material facts. **On merits**, it is maintained that the decree is valid and legal and that the applicants filed the application after the period of 9 years and is hopelessly barred by time. Remaining contents of both the applications are denied and

lastly it is prayed that the applications be dismissed.

5. I have heard the learned counsel for the parties besides perusing the case file carefully with due care and circumspection.

6. Ld. Counsel for the applicant / defendant has placed reliance upon the decision of Hon'ble Supreme Court titled as, **R. Rajanna Vs. S.R. Venkataswamy & Ors. 2015(2) LJR 303, Basanti Vs. Kanwal Singh alias Kamal Singh 2011(3) LJR 220, Chandan Singh Vs. National Insurance Co. Ltd. & Anr. 2015(3) LJR 248 and Shanti Devi & Ors. Vs. Smt. Gomti Devi & Ors. 2014(2)LJR 782.**

7. After having heard the rival contentions, this Court is of the considered opinion that the contentions raised by the applicant have already been decided on merits as even during the appeal decided by Sh. Harnam Singh Thakur, Ld. District Judge, Gurgaon in Judgment dated 19.08.2015, specific issues were framed as to whether the decree dated 03.12.2005 / 03.04.2006 is a result of fraud and mis-representation as also whether the suit is time barred. The findings upon both these issues have already been returned against the applicant. It has been categorically mentioned even in the Judgment by the Ld. Appellate Court that applicant not only appeared in the Court on the date of the decree but also thereafter for the correction of the earlier decree and in these circumstances the ingredients of fraud and mis-representation as alleged by the applicant are not proved at all.

8. Inherent powers cannot be used for reopening of settled matters. There is no error apparent on the face of the record. No ground is made out to revisit the decree dated 03.12.2005. Inherent powers can be used only if a

Judgment and Order has been obtained by playing fraud upon the Courts. In case the party alleged mis-representation and fraud upon the party, the remedy lies to establish such fraud or representation upon a party by leading evidence. That remedy has already been availed in the present matter. The present application may even be maintainable by considering the fact that the decree dated 03.12.2005 was a compromise decree but still there are no averments that the said compromise was not lawful. The fraud, mis-representation or any unlawful act in obtaining the consent of the applicant could have done once, but not twice. Admittedly, she visited the Court to relinquish her share in favour of the plaintiff on 03.12.2005 and also for correction of the Killa Numbers on 03.04.2006. The Clerical or Arithmetical mistakes can always be corrected. It is not an accidental slip or omission or any over sight. As per the Article 137 of the Limitation Act, 1963, the period of limitation in case of the present application would be construed to be 3 years and should be counted from the date when the right to apply accrues. The applicant filed a suit challenging the decree dated 03.12.2005 on the ground of fraud and thereafter the appeal was dismissed vide Judgment dated 19.08.2015. And thereafter the present application was moved on 09.09.2015. The application was certainly within the period of 3 years from the date of on which the right to file the present application accrued as earlier she was prosecuting with due diligence under the advice of the Advocate, another Civil proceeding which related to the same matter in issue and in that Civil proceeding the applicant was claiming the same relief.

9. For the aforesaid reasons, the application for condoning the delay

in filing the application for recalling a Judgment and Decree dated 03.12.2005 is, hereby, allowed.

10. However, for the aforesaid reasons, the application for recalling the order, Judgment and Decree dated 03.12.2005 passed by the Court of Ms. Rachna Gupta, Ld. Civil Judge (Jr. Divn.), Gurgaon u/s 151 CP.C being merit less is, hereby, dismissed. File be consigned to record room after due compliance.

Pronounced in the open Court.
12.09.2017.

(Abhishek Phutela),
ACJ(SD)/Gurugram.
UID No. HR0220

Note: This order consists of five pages and all the pages have been checked and signed by me.

(Abhishek Phutela),
ACJ(SD)/Gurugram
UID No. HR0220

Aarti
JW

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CIS No. APP-197-2015.

Presence: Sh. P.C. Jain, Counsel for plaintiff No.1.
Sh. B.S. Yadav, Counsel for plaintiff No.2.
Sh. Kanwal Kishore Sharma, Counsel for defendant.

Arguments heard on the two applications moved by the applicant / defendants one - for recalling the Judgment and decree dated 03.12.2005 and decree dated 03.04.2006 passed by the Court of Ms. Rachna Gupta, the then Ld. Civil Judge (Jr. Divn.), Gurgaon as well as application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay in filing the application. Order pronounced. Vide my separate order of even date, the application for condoning the delay in filing the application for recalling a Judgment and Decree dated 03.12.2005 stands allowed and the application for recalling the order, Judgment and Decree dated 03.12.2005 passed by the Court of Ms. Rachna Gupta, Ld. Civil Judge (Jr. Divn.), Gurgaon u/s 151 CP.C has been dismissed. File be consigned to record room after due compliance.

Date of order.
12.09.2017.

(Abhishek Phutela),
ACJ(SD)/Gurugram.
UID No. HR0220

Aarti
JW