

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

**CR No. 4569 of 2014 (O&M)
Date of decision: 14.12.2015**

Bhim Singh

... Petitioner

versus

Satveer and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. K.B. Sharma, Advocate for the petitioner.

Mr. Lokesh Singhal, Advocate for respondent No.1.

K.Kannan, J.

The sale by a father in favour of the defendant through power of attorney effected in the year 1994 was sought to be impeached through a suit instituted 18 years later on a plea that the alleged power of attorney was not true and brought about by fraud and that he came to know about the sale only in the year 2012. The application for rejection of the plaint was filed Under Order 7 rule 11 CPC contending that the suit was barred by limitation.

Before much of the arguments got underway, I directed the counsel for the respondent to explain as to how the suit was in time. The counsel says that the plaint must be accepted as it is and the issue of whether it was barred by limitation will go through a process of trial before the Court can take the decision. If the sale has come to the knowledge of the plaintiff only in the year 2012, the suit for declaration that the sale is not valid is competent in the manner in which the relief has been sought.

The argument is fallacious for two reasons: the father's sale cannot be impeached at any time. It has to be done within a period of 3 years if the sale had been effected during the minority of the son and if

the son challenges the sale after attaining the age of majority. The right to challenge the sale has to be within a period of 3 years from the time when the sale is made by the father, for, the sale by the father is not void but voidable at the instance of the son if the property was ancestral and father had sold the property without necessity or for family benefit. The prayer to set aside the sale must, therefore, take place within 3 years from the date when the sale is effected.

If the sale is void for any reason such as when the sale by itself was denied as brought about by impersonation and forgery then the right of suit will be 12 years from the date of the sale and when the purchaser enters into possession. Here again in both instances for setting aside the sale effected by the father or when the sale is made by a person other than the father or by practice of forgery or impersonation, the suit shall be within 12 years when the purchaser's rights will become adverse. The issue of knowledge is irrelevant which could have a value in case where a transaction is vitiated by fraud.

In the facts disclosed on the plaint, the suit could not be entertained and allowed the luxury of gamut of trial, the plaint ought to have been ordered to be rejected. The order passed is erroneous and it is set aside and I find the suit is not maintainable and liable to be rejected. According I allow the revision with Rs. 3,500/- against the respondent.

(K.KANNAN)
JUDGE

14.12.2015

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