

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 1844 of 1987

Date of decision : March 09, 2015

Mandrup (dead) through L.Rs

... Appellants

vs.

Maman Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Babbar Bhan, Advocate for
Mr. Vinod S. Bhardwaj, Advocate
for the appellants.

None for respondents No.1 to 3.

Surinder Gupta, J

This regular second appeal is directed against the concurrent findings of courts below whereby suit of appellant Mandrup (since deceased) now represented by his legal representatives was dismissed. Mandrup had sought relief as follows :-

“Suit for declaration to the effect that the sale deed bearing No.1397 Bahi No.1 Jild No.236 page NO.169 to 171 dated 12.3.1959 effected by defendant No.5 in favour of defendant No.4 and the sale deed dated (sic) bearing No.80 in additional Book No.1 volume No.186 at page Nos.195 to 1999 dated 28.2.1977 effected by defendant No.4 in favour of defendant No.1 to 3 and Mutation No.367 Sanctioned on 12.11.1978 are wrong, illegal against law and fact and the same are ineffective and inoperative on the revisionary rights of the plaintiff and the same are without legal necessity and consideration and are not binding on the plaintiff, on the basis of evidence both oral and documentary.”

The case of plaintiff, in brief, was that Amin Lal defendant-respondent No.5 was his father. His real mother Smt. Dhapa was married with Fatta brother of Amin Lal, who died during World War and after his death Smt. Dhapa contracted *Karewa* marriage with Amin Lal. Defendant

No.4 Smt. Manni was also the wife of Amin Lal. In the year 1958, due to quarrel between his two wives namely Smt. Manni and Smt. Dhapa, defendant No.5 executed a sale deed dated 12.3.1959 of his land measuring 73 Bigha 15 Biswa situated in the revenue estate of village Obra, Tehsil and District Bhiwani, which was ancestral qua the plaintiff and defendant No.5. The sale was without consideration and legal necessity. Defendant No.4 was living with defendant No.5 in his house and had a common mess with him, as such, had no source of income or she could manage the sale consideration. Defendant No.4 never came in possession of the above land and the same continued to be cultivated by defendant No.5. All this reflect that the sale was only a paper transaction. In November, 1974, defendant No.4 moved an application before the Revenue Authorities to get her name entered in the column of cultivation for the crop of *Khariff 1974*. That application was, however, dismissed. Defendant No.4 under the influence of defendants No.1 to 3 sold the suit land to them vide sale deed dated 28.2.1973 for a sum of ₹49,000. The sale deed was got executed and registered at Delhi falsely showing the place of residence of defendant No.4 at Delhi. In lieu of the land sold vide sale deed dated 12.3.1959, land measuring 164 kanal 1 marla was allotted after consolidation of land. The sale of land by defendant No.5 was without any legal necessity or consideration. Being ancestral property defendant No.5 was not competent to alienate the same in favour of defendant No.4 and defendant No.4 had no authority to sell the same to defendants No.1 to 3.

Defendant No.3 contested the suit. It was pleaded that the suit was barred by limitation. It was denied that Smt. Dhapa ever married Amin Lal, who was already married and had a living wife Smt. Manni. All other averments of the plaintiff were contested and controverted and denied, *inter alia*, pleading that the suit land was not joint Hindu family ancestral property in the hand of defendant No.5 who had validly transferred the same in favour of defendant No.4 vide sale deed dated 3.10.1958 and being the owner of the suit land, defendant No.4 had sold the same to defendants No.1 to 3 for consideration of ₹49,000.

Defendant-respondent No.1 in his separate written statement contested the case of plaintiff with the similar plea as taken by defendant No.3.

Smt. Manni defendant No.4 filed separate written statement contesting plaintiff's claim that her husband Amin Lal had performed *Karewa* marriage with Smt.Dhapa. It was alleged by defendant NO.4 that about 40 years back, defendant No.5 developed illicit relations with Smt. Dhapa and started living with her. This strained her relations with defendant No.5 as husband and wife and she started living separately. She had been doing labour and cultivation to earn her livelihood. The land measuring 73 Bigha and 15 Biswa was purchased by her from defendant-respondent No.5 for a consideration of ₹1,500. Defendant No.5 required this amount for his family needs. After purchase, she came in possession of the suit land. In consolidation 164 kanal 1 marla of land was allotted in lieu of land purchased by her and she sold this land to respondents No.1 to 3.

Amin Lal defendant No.5 in his separate written statement has denied his relationship with plaintiff and his marriage with Smt. Dhapa. All the the averments of the plaintiff were also contested and controverted.

Pleadings of the parties, led to the framing of following issues:-

1. *Whether the sale deed dated 12.3.1959 in favour of defendant No.4 by defendant No.5 is illegal wrong, against law and facts and not binding on the rights of the plaintiff?OPP*
2. *Whether sale of the suit land dated 28.2.1977 by defendant No.4 in favour of defendant No.1 to 3 is illegal, against law and facts and not binding on the rights of the plaintiffs?OPP*
3. *Whether the plaintiff is the step son of defendant No.3 and son of defendant No.4?OPP*
4. *Whether the suit is time barred?OPD*
5. *Whether the plaintiff has no locus standi to sue?OPD*
6. *Whether the suit is not maintainable in the present form?OPD*
7. *Whether the suit is not properly valued for the purpose of*

court fee and jurisdiction?OPD

- 7A. *Whether the suit property is the ancestral of plaintiff and defendant No.5? If so, whether defendant No.5 was competent to alienate the suit property?OPP*
- 7B. *Whether the sale deed by defendant No.5 in favour of defendant No.4 dated 12.3.1959 is fictitious, illegal, null and void?OPP*
- 7C. *Whether the defendant is the owner in possession of the suit land, if so, its effect?*
8. *Relief.*

The suit was dismissed by the then Additional Senior Sub Judge, Bhiwani, with the observations that the suit challenging the sale deed dated 12.3.1959 executed by defendant-respondent No.5 Amin Lal in favour of his wife Smt. Manni is barred by limitation under Article I of Punjab Limitation (Custom) Act, 1920. The land sold vide sale deed dated 3.10.1959 was held to be ancestral property and in view of the admission of the parties it was held that they are governed by customary law applicable to the Jats in Haryana.

Not satisfied, the appellant filed appeal which was also dismissed by the Additional District Judge, Bhiwani, vide judgment dated 20.1.1987. The findings of the lower court on issues No.1, 2, 3, 6, 7, 7B and 7C were not assailed in appeal. The only challenge before the first appellate court was to the findings recorded on issue No.4, 5 and 7A. The finding of Additional Senior Sub Judge, Bhiwani on issue No.4 were affirmed with the observations in para No.17 of the judgment as follows :-

“17. After hearing the rival contention of the parties on issue No.4, I am left with no option, but to hold that the parties in the present suit are governed by custom and, therefore, Article I of the Punjab Limitation Custom Act, 1920 is applicable to this case. This view of mine finds support from the law laid down in Mani Ram Major and others vs. Dharam Singh and othes 1973 Punjab Law Reporter 787 and at page 791, it is held that in the instant case the limitation of six years for challenging the alienation in question is given in Article I of the Punjab

Limitation (Custom) Act 1 of 1920. There it is mentioned that if the alienation is by a registered deed, the limitation of six years will commence from the date of the registration of such deed.” Accordingly, I hold that the suit of the plaintiff is hopelessly time barred and the finding of the learned trial court on issue No.4 is hereby affirmed.”

The findings on issue No.7A were assailed only due to typographical error in the findings and the same were rectified with the observations in para No.18 as follows :-

“18. It was next contended by the learned counsel for the appellant that the finding with regard to issue No.7-A though has entirely gone in favour of the plaintiff-appellant, in discussion but due to the typographical mistake while giving findings on this issue, learned trial court has decided in favour of defendants and if the entire evidence discussed issue NO.7-A is taken into consideration, it is found that the trial court was to decide this issue in favour of the plaintiff. Learned counsel for the respondent has gracefully conceded at the bar that the suit land is ancestral qua the plaintiff. Therefore, the finding given by the learned trial court on issue No.7-A be treated as having been decided in favour of the plaintiff. Accordingly, the finding on issue No.7-A is hereby returned in favour of the plaintiff-appellant.”

In the same manner, findings on issue No.5 were also rectified to hold that the plaintiff-appellant had locus standi to file the present suit.

During course of arguments, the findings of the courts below that the parties to the suit are governed by the customary law with regard to inheritance of the suit land have not been disputed by learned counsel for the appellant. He has assailed the findings of courts below on the ground, firstly that provisions of Punjab Limitation (Custom) Act were not extended to the State of Haryana, as such, the suit cannot be held to be barred under Article 1 of the Act and secondly, under Article 59 Limitation Act, 1963, the suit filed by the appellant was within limitation as the same had been filed within three years of the date of knowledge of the sale deed dated

12.3.1959.

The provisions of Article I of Punjab Limitation (Custom) Act, 1920 reads as follows :-

A suit for declaration that an alienation of ancestral immovable property will not, according to custom be binding on the plaintiff after the death of the alienator or (if the alienator is female) after her death or forfeiture of her interest in the property	Six years	Firstly, if the alienation is by a registered deed the date of registration of such deed. Secondly, if the alienation is not by a registered deed : (a) if an entry regarding the alienation in the registered of Mutations has been attested by Revenue Officer under the Punjab Land Revenue Act, 1886, the date on which the entry is attested. (b) If such entry has not been attested, the date on which the alienee takes physical possession of the whole or any part of the property alienated in pursuance of such alienation. (c) In all other cases, the date on which the alienation comes to knowledge of the plaintiff.
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As is apparent from the reading of the aforesaid article, this suit which has been filed in June, 1979 challenging the sale made in 1959 is hopelessly time barred.

Admittedly, the appellant obtained a collusive decree dated 1.2.1971 of the land of Amin Lal in his favour, on the basis of which mutation Ex.D11 was sanctioned in his favour. While obtaining that decree, appellant had pleaded a family settlement between the parties, as a result of which land measuring 216 kanal had fallen to his share. That decree pertain to the share of Amin Lal and was allowed on the basis of family settlement. It is highly doubtful that this fact escaped the notice of appellant in the year 1971 that the suit land has been mutated in the name of Smt. Manni on the basis of sale deed dated 12.3.1959. In the details of land owned by Amin Lal, Manni Devi and Mandrup Singh submitted before the Surplus Authorities (Ex.P3), share of each member of family was described and the appellant was shown to be owner of 216 kanal of land and Smt. Manni 73 Bigha 15 Biswa. These details were submitted with the entry of revenue record up to *Khariff 1973*. This document was also sufficient notice to the

plaintiff regarding sale deed dated 12.3.1959 executed in faovur of Smt.Manni. Article I of Punjab Limitation (Custom) Act, 1920 do not extend the period of limitation from the date of knowledge rather it specifically prescribed the limitation to challenge the alienation made by the Registered Deed as 6 years from the date of registration of such deed.

As is apparent from the record and observations of the courts below, the appellant was even having the knowledge of alienation in favour of Smt. Manni, as such, the plea that the suit is within limitation from the date of knowledge is not available to the appellant. Instant civil suit filed on 15.06.1979 challenging sale deed dated 12.3.1959 was rightly held to be barred by limitation by both the courts below.

On perusal of the lower court record, judgments of the courts below, I find no factual or legal infirmity therein calling for interference.

No substantial question of law arises for determination.

The appeal has no merits and is dismissed.

(Surinder Gupta)
Judge

March 09, 2015
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