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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2280 of 2010 (O&M)
Date of Decision: 29.10.2015

MOHINDER SINGH AND ANR.

.....Appellants

Vs

SURJIT KAUR

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.K. Garg, Advocate
for the appellants.

None for respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.(Oral)

[1]. Defendants are in second appeal against the judgment and decree dated 21.08.2009 passed by Additional District Judge, Moga whereby judgment and decree dated 10.09.2007 passed by Additional Civil Judge (Senior Division) Moga has been set aside.

[2]. Plaintiff-respondent filed suit for declaration to the effect that she is owner of 1/24th share in the land and the sale deed dated 01.09.1993 is null and void as the same is the result of impersonation.

[3]. The defendants contested the suit by questioning the *locus standi* of the plaintiff besides taking other customary pleas including

the plea of limitation.

[4]. Issue No.1 was framed in the context of entitlement of the plaintiff to seek declaration. Onus to prove this issues was on the plaintiff.

[5]. Plaintiff got examined Anil Kumar Gupta, Fingerprint Expert as PW-1, who has submitted his report to the effect that thumb impressions appearing on the sale deed are not that of the plaintiff.

[6]. Defendants has not led any evidence counter to the report Ex.P-1 submitted by Anil Kumar Gupta, Fingerprint Expert PW-1, nor any marginal witnesses or scribe have been examined by them to prove execution of sale deed. Defendants only examined two witnesses Bahadur Singh and Mohinder Singh DW-1 and DW-2 respectively, who are defendants themselves.

[7]. The suit came to be filed on 04.02.1999. The trial Court by relying upon Article 56 of the Limitation Act concluded that the suit should have been filed within three years from the date of knowledge of forgery and simpliciter suit for declaration without seeking consequential relief of possession is not maintainable under Section 34 of the Specific Relief Act. Findings under issue No.1 were returned accordingly.

[8]. At appellate stage, plaintiff sought amendment seeking alternate relief of joint possession which was allowed by the lower Appellate Court. With the acceptance of amendment, the lower Appellate Court accepted the appeal by holding that the suit for

declaration with joint possession is maintainable once the factum of alleged sale deed is not proved on record.

[9]. I have considered the submissions made by learned counsel for the appellants.

[10]. Once the factum of sale deed is not proved on record, plaintiff would be deemed to be a co-sharer with her brothers. Suit on the basis of title is not to be governed by Article 56 of the Limitation Act, rather suit based on title in considered opinion of this Court draws no such limitation of three years as has been projected by the trial Court.

[11]. Learned counsel for the appellants has fairly conceded that no evidence in the context of proving execution of sale deed has come on record except the bald statements of the defendants.

[12]. Since the execution of sale deed is not proved, the signatures of the plaintiff are not proved on the sale deed. By ignoring the sale deed, plaintiff would fall in the category of co-sharer along with her brothers. No such limitation arises in the event of seeking declaration by a co-sharer alongwith plea of joint possession which has been rightly allowed by the lower Appellate Court.

[13]. Resultantly, no law point worth consideration is involved in this appeal, consequently finding no merit in this appeal, the same is accordingly dismissed.

October 29, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE