

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

**RSA No.1263 of 2012 (O&M)
Date of decision:19.11.2015**

Avtar Singh and others

... Appellants

Vs.

Inder Pal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Vishal Garg, Advocate
for the appellants.

Mr. Akshay Bhan, Senior Advocate with
Mr. Gurinder S. Sandhu, Advocate
for respondent No.9.

Mr. G.S.Bhatia, Advocate
for respondents No.11 and 13.

AMIT RAWAL J. (Oral)

C.M.No.3375-C of 2012

For the reasons stated in the application, duly supported
by an affidavit, delay of 501 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.1263 of 2012 (O&M)

Appellant/plaintiffs are in Regular Second Appeal against
the concurrent findings of facts and law, whereby, the suit for

declaration and permanent injunction for setting aside of the judgment and decree dated 18.04.1978 being null and void, has been dismissed.

Mr. Vishal Garg, learned counsel appearing on behalf of the appellant-plaintiffs submits that plaintiffs have acquired the knowledge few weeks ago of filing of the suit in the year 2001, that the aforementioned judgment and decree dated 18.04.1978 had been obtained by defendant No.1- Inder Pal Singh in civil suit No.361 of 1978 instituted on 28.02.1978, in respect of the suit property against Bhagat Singh and other co-villagers, who admitted the statement and on the basis of the same, suit was decreed, whereas, the decree is not sustainable in the eyes of law for want of registration. Even otherwise, as per the translated copy of list of proprietors, Ex.P5/T, the father of the appellant/plaintiffs were the proprietors, therefore, they have right in the joint khata of village Sandholi. He further submits that both the Courts below have non-suited the appellant-plaintiffs on the premise that parentage of the father of the plaintiffs has not been shown in the plaint which is not co-related to the list of proprietors, thus, there is illegality and perversity in the findings of the Courts below. He further submits that judgment and decree, aforementioned, had been obtained by defendant No.1-Inder Pal Singh on the premise that he had acquired the property by efflux of time which is not permissible in view of the law laid down in **Bhim Singh vs. Zile Singh 2006(3) RCR (Civil) 97.**

He further submits that defendant No.1 - Inder Pal Singh in that suit admitted that they were in occupation of the land on the basis of the lease which by efflux of time had been converted into ownership, which is not permissible in law. Thus, licensee cannot claim the ownership.

Mr. Akshay Bhan, learned Senior counsel assisted by Mr. Gurinder S.Sandhu, Advocate and Mr. G.S.Bhatia, learned counsel appearing on behalf of respondents No.9 and 11 & 13, respectively submit that they are bonafide purchaser of the land for valuable consideration as property was purchased way back in the year 1982, thus, the suit ex facie was not maintainable, much less, time barred as there was no challenge to the sale deed. The limitation to challenge the registered document, as per Article 137 of the Limitation Act, is three years. They further submit that mere exhibition of the document cannot be dispense with its proof, in essence, no witness has been summoned from the revenue department to prove the averments made in the suit except the bald statement of Dharam Singh. The list of proprietors cannot be looked into for the purpose as the same has not been proved in accordance with law. Even otherwise, it has surfaced from the cross-examination of the plaintiffs that they had knowledge of the sale deed 20 years back, therefore, the plaintiffs cannot be permitted to take the plea that there is no limitation to file suit claiming title, thus, prayed for dismissal of the appeal.

Mr. Vishal Garg, in rebuttal, submits that Dharam Singh tendered document Ex.P5 and there is no objection to the same, therefore, defendants cannot be permitted to take plea of exhibition of document.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

It is settled law that mere exhibition of the document cannot be dispensed with its proof.

In order to lend support to the aforesaid law, I rely upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Sait Tarajee Khimchand and others vs. Yelamati Satyam and others 1971 AIR (SC) 1865.**

It is admitted position on record that plaintiffs have not examined any witness from the revenue department in tendering the documents, i.e., list of proprietors and jamabandis etc. Thus, the authenticity of the document has not been proved.

There is another aspect of the matter. The list of proprietors does not spell out the parentage of the father of the plaintiffs. The factum of the plaintiffs, being proprietors specifically denied in the written statement. It was incumbent upon the plaintiffs to lead direct and cogent evidence as per Section 50 of the Indian Evidence Act to show that they are actually the sons of the proprietors. Once there is an admission in the cross examination with regard to execution of the sale deed in the year 1981 yet there is no

challenge to the same in the suit, suit has rightly been held to be barred by law of limitation. In my view, respondent-defendants are bonafide purchaser for valuable consideration, for the reason that before buying the property they had verified the record, i.e., mutation with regard to title as per the judgment and decree had rightly been entered.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 19, 2015
savita