IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 239 of 2012 (O&M)
Date of decision : 07.01.2015

Naranjan Singh

......Appellant

Versus

Ranjit Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Baljinder Singh, Advocate
for the appellant

Mr. Satinder Khanna, Advocate
for the respondent

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ANITA CHAUDHRY, J.

This is plaintiff's second appeal challenging the judgment and decree of the Courts below as his suit was dismissed.

Detailing the facts, the plaintiff's case was that he was owner to the extent of 1/3rd share in the land in dispute alongwith his brother Sarup Singh. Sarup Singh used to look after the property as he was residing in Delhi. The land in dispute is situated in village Tibba, Tehsil Sultanpur Lodhi, District Kapurthala. In January 2004, when the plaintiff visited his native village in order to negotiate the sale of his property including the suit land, he came to know that the defendant had already prepared a false sale deed. On enquiry from the villagers and the revenue record, he found that the defendant Ranjit Singh in connivance with his brother Sarup Singh and the marginal witnesses had fabricated a false sale deed dated 30.11.1981. The case set up by the plaintiff was that he had never sold the land. The plea raised by the plaintiff was that the sale to the extent of his share did not confer any right on the defendant. The plaintiff approached the police and lodged a complaint against the persons who were involved. The Lambardar, a witness to the document had already died and the defendant was residing in Muscat. The trial commenced and the Court convicted Bakshish Singh and Sarup Singh vide judgment dated 20.02.2007. In 2005, Ranjit Singh through his wife Satinder Kaur being his attorney filed a suit in September 2005 asserting their title in the land in suit claiming title on the basis of the sale deed dated 30.11.1981 which was dismissed on 17.10.2006. The plaintiff requested the attorney to admit his claim and hand over the possession. It was pleaded that the cause of action arose to the plaintiff in January 2004 when he came to know of the false sale deed. The plaintiff prayed for a decree of possession and cancellation of the sale deed.

The defendant took the plea that the land had been purchased for consideration from the plaintiff and his brother and the defendant was a bonafide purchaser. The plea of limitation was raised as the suit had been filed 25 years after the cause of action arose. It was pleaded that the land had been purchased in 1981 and the mutation was entered in the revenue record. It was pleaded that the defendant had been visiting the village a number of times and he had been seeing his peaceful possession. It was pleaded that the plaintiff had sold another piece of land in 1991 and neither he nor his son had ever objected. It was pleaded that the limitation for avoiding or cancelling the sale deed was three years. In the alternative the defendant took the plea of adverse possession. It was pleaded that the appeal had been filed against the conviction order. It was pleaded that the judgment dated 17.10.2006 was not binding as the suit had been filed by Satinder Kaur without proper authorization.

On the pleadings of the parties following issues were framed:-

1. *Whether the plaintiff is entitled to declaration that the sale deed dated 30.11.1981, registered on 2.12.1981, executed by defendant regarding suit land to the extent of his share in favour of plaintiff is illegal, invalid and confers no title or interest in favour of plaintiff? OPP*
2. *Whether the plaintiff is entitled to possession of suit land on the basis of title? OPP*
3. *Whether the plaintiff is entitled to permanent injunction restraining the defendant from alienating or transferring the suit land in any manner or creating any charge over suit land? OPP*
4. *Whether the plaintiff has no cause of action to file the present suit? OPD*
5. *Whether the suit is within limitation? OPP*
6. *Whether the defendant has become owner of suit land on the basis of adverse possession? OPD*

7. Whether the plaintiff has not brought the correct fact before the Court? OPD

8. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

9. Whether the defendant is owner in possession of the suit land as bona fide purchaser, for consideration and without notice? OPD

10.Relief.

The trial Court on appreciation of oral and documentary evidence held that the sale deed in favour of the plaintiff was void and was a result of impersonation. It was held that in order to seek its cancellation under Section 31 of the Specific Relief Act the suit could have been filed within three years of date of knowledge and the plaintiff had admitted that he knew about the sale deed in 2004, therefore, the suit filed in February 2007 i.e. more than three years from the date of knowledge was barred by limitation. A finding was returned against the defendant on the plea of adverse possession. A finding was also returned against defendant on issue No. 1. The suit was dismissed being barred by limitation.

Aggrieved by the said judgment and decree of the trial Court the plaintiff preferred an appeal which was also dismissed. The finding recorded on the issue of limitation was affirmed.

The present appeal came to be admitted on the following substantial questions of law framed on 21.08.2014:-

"*(i) Whether the plaintiff can be non-suited on the ground of limitation in a suit for possession?*

> *(ii) Whether dismissal of earlier suit filed by Ranjit Singh son of Sohan Singh (respondent in the instant appeal) through his wife Satwinder Kaur will operate as res judicata?"*

The only issue which has to be examined is whether the suit is governed by Article 59 and whether the suit is barred by time as it was only canvassed before me.

Learned counsel appearing for the appellant urged that the sale deed executed in favour of the defendant had been held to be void and a result of impersonation and a case was got registered which ended in conviction but it was another matter that the appeal was accepted but the revision was pending. It was contended that the defendant's plea that he was *bona fide* purchaser was not accepted and those findings have not been assailed by the defendant but the plaintiff had been non suited on the point of limitation. It was contended that the defendant had filed a suit in 2005 in which appellant had taken a plea that the sale deed was a result of fraud and impersonation and that suit had been dismissed. It was urged that the defendant had taken a plea of adverse possession which implies that he had acknowledged the title of the plaintiff. It was pleaded that the suit was filed on the basis of title and the limitation was 12 years.

Per contra the submission on behalf of the respondent-defendant was that the sale deed was a registered document which means notice to all and when a suit is filed for cancellation of a transaction then it is governed by Article 59 of the Limitation Act and the limitation is three years. It was urged that the plaintiff had positively asserted that he came to know about the sale deed in January 2004 and the suit was filed in February 2007 which was beyond limitation and a reading of Section 31 of the Specific Relief Act 1963 makes it ample clear that a suit for cancellation has to be filed in respect of an instrument which is void or voidable.

There is no dispute with respect to the date of filing of the suit. The suit was filed on 07.02.2007. In para 7 of the plaint there is a specific averment that the cause of action arose to the plaintiff in January 2004, when the plaintiff came to know regarding the false sale deed.

Para 7 of the plaint reads as under:-

> *"7. That the cause of action arose to the plaintiff in January 2004, when the plaintiff came to know regarding this false sale deed regarding the suit land from the village and from the revenue record, and further from the refusal of the defendant and his wife being his attorney since a week back."*

The question of limitation solely revolves round the interpretation to be placed on Article 59 and Article 65 of the Act.

Article 59 and 65 reads as under:

Description of Suit	***Period of limitation***	***Time from which period begins to run***
PART IV – SUITS RELATING TO DECREES AND INSTRUMENTS		
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.

Description of Suit	***Period of limitation***	***Time from which period begins to run***
65. For possession of immovable property or any interest therein based on title. *Explanation* : For the purposes of this article- (a) Where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) Where the suit is by a purchaser at a sale in execution of a decree when the judgement-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

It is clear from Article 59 that it deals with the cancellation of an instrument. The cancellation of instrument is dealt with under Section 31 of the Specific Relief Act, 1963 and it reads as under:

> *"31. When cancellation may be ordered.- (1) Any person against whom a written instrument is void or voidable, and who has responsible apprehension that such instrument, if left outstanding may cause him serious*

injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

A reading of the aforesaid provision makes it clear that the suit for cancellation could be filed both in respect of an instrument, which is void or voidable.

The Apex Court in the case of ***Prem Singh and others vs. Birbal and others, reported in (2006)5 Supreme Court Cases 353,*** dealing with the difference between a valid, void or voidable instrument has held as under:

"15. Section 31 of the Specific Relief Act, 1963 thus, refers to both void and voidable document. It provides for a discretionary relief.

16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non-est in the eye of law, as it would be a nullity.

17. Once, however, a suit is filled by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary Article would be.

18. Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply *to the case of such instrument. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid.*

19. It is not in dispute that by reason of Article 59 of the Limitation Act, the scope has been enlarged from old Article 91 of 1908 Act. By reason of Article 59, the provisions contained in Articles 91 and 114 of 1908 Act had been combined.

20. If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void.

From the above it is clear that if the document is void *ab initio* a decree for setting aside the same would not be necessary as the same is *non-est* in eyes of law as it would be a nullity.

Both the Courts below had given a categorical finding that the sale deed was a result of impersonation and the plaintiff had not sold the land. The defendant chose not to file any appeal. The order against him had become final. The sale deed had been held to be invalid. So far as the share of the plaintiff was concerned it was necessary to seek a declaration that the sale deed was invalid. The fact that the plaintiff has sought a declaration with respect to the sale deed is of no consequence. The possession of the property has been taken by the defendant pursuant to a void document and he had no tittle and has no right to remain in possession. Since the possession has been taken on the basis of void document Article 65 of the Limitation Act would apply and the limitation to file a suit would be 12 years.

In ***Ajudh Raj and others vs. Moti s/o Mussadi, 1991(3) SCC 136,*** it was held that if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eyes of law and is not necessary to set it aside, and such a suit will be governed by Article 65 of the Limitation Act.

The plaintiff is claiming possession of the property on the basis that he was a co-owner. By way of a registered sale deed, the property had been sold to the defendant by the brother of the plaintiff by impersonation. The possession of the defendant is not authorized. The plaintiff as owner is seeking to recover possession from the defendant. The defendant had relied upon the sale deed as it purported to create some right in him. The document has been held to be void and *non-est* in the eyes of law. So far as the share of plaintiff is concerned the plaintiff was seeking its cancellation but the relief of possession was not dependent on the cancellation of the document. Even without cancellation of the document, it is a nullity and void *ab inito*. The relief of possession being claimed by the plaintiff is based on his title. The plaintiff was only explaining the circumstances as to how the defendant had got into possession, therefore, to succeed in the suit for possession which is based on title, the sale deed was of no consequence. So far as the plaintiff's rights are concerned, the plaintiff wanted cancellation of the document so that the public at large were not misguided/deceived in future. As held by the Apex Court in the aforesaid judgment that as the relief of possession is based upon title and not based upon the sale deed, the correct Article applicable would be Article 65 of the Limitation Act and not Article 59.

The defendant had raised a plea of adverse possession and an issue was framed but at the time of arguments the plea was not pressed but a finding was recorded against the defendant. The suit had been filed within 12 years and it is in time, therefore, the finding recorded by the Courts below on the point of limitation is set aside.

For the aforesaid reasons, the appeal is allowed. The findings recorded against the plaintiff on issue Nos. 2 to 5 are set aside and the plaintiff's suit is decreed as prayed for. The parties are left to bear their own costs.

07.01.2015 **(ANITA CHAUDHRY)**
reena **JUDGE**