

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1680 of 2013 (O&M)

Date of Decision: January 12, 2015

Pritpal Singh

...Appellant

Versus

Mohinder Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Rajiv Joshi, Advocate,
for the appellant.

AMIT RAWAL, J.

The present Regular Second Appeal is directed at the instance of the appellant-defendant against the impugned judgments of both the Courts below, whereby the respondent-plaintiffs have been declared to be owners in possession of the land measuring 3 kanals 18 marlas on the basis of the registered sale deed dated 16.4.1990 executed by Makhan Singh son of Karam Singh, who is none else but the father of the appellant-defendant.

The trial Court, after examining the oral and documentary evidence brought on record, found that Makhan Singh, father of the appellant-defendant, had executed a registered sale deed in favour of the respondent-plaintiffs. The trial Court as well as the Lower Appellate Court repelled the contention of the appellant-defendant that the suit was time barred as per Article 58 of the Limitation Act as it had not been filed within three years from the date the appellant-defendant denied the ownership of

the respondent-plaintiffs.

Learned counsel appearing on behalf of the appellant-defendant, in support of his submission, submits that on 27.3.1998, there was a settlement between the appellant-defendant and the respondent-plaintiffs and the said settlement was admitted by the respondent-plaintiffs during the cross-examination. In support, learned counsel for the appellant-defendant relies upon the provisions of Order VIII, Rule 1-A CPC. For the sake of brevity, the provisions of Order VIII Rule 1-A CPC are extracted herein below:-

“[WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM]

Written statement.-The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]

1A Duty of defendant to produce documents upon which relief is claimed or relied upon by him.-(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter

such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.]”

On perusal of the provisions of Order VIII, Rule 1-A(4), it is evident that the appellant-defendant had not relied upon the documents. Even assuming for the argument sake that the appellant-defendant had not relied upon this document as mandatorily required by Order VIII Rule 1-A, even then the principle of sub-rule (4) of Rule 1-A of Order VIII would not come to the aid of the appellant-defendant in view of the fact that the appellant-defendant had not specifically denied the cause of action accrued to the respondent- plaintiffs.

The appellant-defendant had not taken the plea of settlement in the written statement. While filing the suit, the respondent-plaintiffs in para

7 of the plaint specifically pleaded that the cause of action arose to file the suit a month back of filing of the suit in 2006 when the defendant denied the claim of the respondent-plaintiffs and thereafter a day before the filing of the suit when he finally refused to admit the claim of the plaintiffs. For the sake of brevity, para 7 of the plaint is extracted herein below:-

“7. That the cause of action arose to the plaintiff against the defendant firstly about a month back and lastly on yesterday when he finally refused to admit the claim of the plaintiff at village Nawanpind Naicha, teh.Phillaur where the suit property is situated within the jurisdiction of this Hon'ble Court, hence the Hon'ble Court has got the jurisdiction to try and to decide the present suit.”

The aforementioned averment in para 7 of the plaint was not specifically denied in the written statement. For the sake of brevity, para 7 of the written statement is extracted herein below:-

“7. That para No.7 of the plaint is incorrect, wrong, hence denied.”

In view of the fact that the appellant-defendant did not specifically deny the averment made in para 7 of the plaint, the suit filed in the year 2006, claiming a declaration of ownership, cannot be said to be barred by law of limitation. Article 58 of the Limitation Act provides a period of three years to claim a declaration when a right to file suit accrues. In the instant case, the right to file suit arose to the plaintiffs in the month of May, 2006 and accordingly the suit was filed in the year 2006.

There is no challenge of the appellant-defendant to the

registration of the sale deed executed by his father Makhan Singh. Both the Courts below have rendered a finding of fact and law based on the oral and documentary evidence.

No substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

January 12, 2015
ramesh

(AMIT RAWAL)
JUDGE