IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3907 of 2013 (O&M)
Date of Decision.13.08.2015

Mangal Singh and another ....Appellants

Versus

Naib Singh and others ......Respondents

Present: Mr. Ashok Singla, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The plaintiff filed a suit against his brother challenging the sales which he had executed in favour of his brother in the year 1970 with reference to 25 kanals of land. He even admitted that he had sold yet another portion of property of 17 kanals of land to his brother in 1978. The contention was that his brother Gurdial Singh was elder to him and he was in village Faridkot while he has migrated to Rajasthan for his living. The plaintiff had immense trust on him that he will take care of his interest.

2. The plaintiff returned to the village in the year 2003 to find that his brother had obtained a sale in the name of his sons and the plaintiff would challenge that the 1st defendant had committed breach of trust and had obtained a sale consideration in favour of his sons without paying any consideration to him. The plaintiff had died during the pendency of the suit and his sons had been impleaded. The sons had

brought an amendment to the plaint that the property was ancestral in character and even if the sale by his father was true, the sale will not bind them. The application was dismissed. The trial had progressed and in the cross-examination of the defendant it was sought to be elicited that the brother was still sending money, share of crops from the lands to the plaintiff at Rajasthan. As regards the consideration mentioned in the sale deed, it was sought to be elicited that the entire consideration as having been paid could not be true, for, the recital in the document itself was that only ₹ 4700/- was said to have been paid before the Sub Registrar and remaining amount had been offered towards discharge of debts or other sums said to have been given to the plaintiff earlier.

3. The trial Court dismissed the suit and in appeal, the plaintiffs had challenged also the interim order declining the relief of amendment to the plaint to challenge the sale deed as legal representatives of the plaintiff on the ground that the properties were ancestral in character and that the sale will not bind them. The Appellate Court has affirmed the decision.

4. The plaintiffs are before this Court pointing out that if the sale is not fully supported by consideration as is evident from the admissions made by the 1st defendant, the plaintiffs were entitled to a decree. If the plaintiff was challenging a sale executed in the year 1970 as not supported by consideration and that the defendant had committed a breach of trust, such a relief of the sale being not valid ought to have been made within a period of three years from the date when execution of the sale was made. Law does not wait for person to arrive at his convenience 30 years later that the brother had committed a breach.

Even if the sale consideration was not paid as contended by the plaintiff, the transfer of title would still take place and remedy will be only to sue for unpaid consideration. There could be instances when person is suing for a transaction as vitiated by fraud and seeks to establish the fact that consideration not having been paid as a circumstance to illustrate the fraud. Here we are talking about a transaction which is admitted by the plaintiff but would want the annulment of its effect 33 years later on a plea that there is no consideration for the sale. The suit was hopelessly barred by limitation and there is no question of considering any point in favour of the plaintiff that the consideration had not been established and therefore, the plaintiff will have the benefit of having the sale set aside.

5. Even a rejection of prayer for amendment could not be found to be bad. The plaintiff had died and his legal representatives had been brought on record. Their own right to prosecute the suit will be only to plead for what their father himself contending for. If the legal representatives wanted to set up pleas which were inconsistent with the plaintiff's own contentions as made earlier, then the remedy would have been only to have the suit withdrawn and then come up with their own suit. If the legal representatives were seeking for amendment of the plaint which was different from the original cause of action on plea by their father that the sale was vitiated for non payment of consideration then the Court below was perfectly justified in declining to allow for such an amendment to be made. Even an argument that the plaintiffs should have right to challenge the sale, it cannot be done at any point of time. A sale of ancestral property is not void at law even for lack of legal

necessity or family benefit. It is voidable by any son who established that there was no consideration or family necessity for such a transaction. That challenge must be brought within a period of three years from the date when the sale was executed or when any one of the sons of the alienating coparcener completed the age of 18 years and come in a position to give complete discharge of other junior coparceners as well. Legal representatives of the deceased-plaintiff were far beyond the age of 18 years when they sought for such plea for an amendment. Even if the amendment had been ordered, the plaintiff could not have come up any benefit. I do not think there is anything substantial in the second appeal.

6. The judgments of the Courts below are maintained and the second appeal is dismissed.

(K. KANNAN)
JUDGE

August 13, 2015
Pankaj*