

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.330 of 2015 (O&M)
Date of Decision: 20.07.2015

Sher Singh

... Appellant

Versus

Gurlal Singh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Arora, Advocate,
for the appellant.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

1. This is defendant's second appeal in a suit for recovery of money filed by his brothers. The suit has been decreed and the appeal has failed. He has become a judgment-debtor entitled to the money decree. When this matter came up for hearing for the second hearing on February 12, 2015 Mr. Sandeep Arora appearing for the appellant sought time to obtain instructions as to whether his client is ready to deposit the amount in court as security towards the decree as provided in Order 41 Rule 5 (3) (c) to ensure timely satisfaction of the decree in case the appeal fails.

2. Mr. Arora submits after reverting back from his client that he has instructions from him to state that the appellant is not prepared to deposit the amount of the decree as security of decretal amount.

3. Having read the judgments of the courts below and after hearing

Mr. Arora on the merits of the case I would without hesitation dismiss the appeal for the following reasons:-

4. The two plaintiffs constituted the defendant as their attorney whereby they authorized him, who was none other than their brother, to sell their property. The power of attorney (Ex.P-3) was registered on December 06, 2001 with respect to alienation of their property situated at Nurmahal. On the strength of the power of attorney, defendant Sher Singh sold the suit property vide sale deed dated September 03, 2003. He received the sale consideration from the vendees but did not account for the money to his brothers, the plaintiffs. Sher Singh refused to pay the sale consideration of Rs.3,93,000/-. The suit was instituted on September 27, 2008 for recovery of money.

5. Before the suit was filed, Sher Singh executed a compromise agreement on August 25, 2007 (Ex.P-1) in favour of the plaintiffs acknowledging his liability to pay a sum of Rs.3,93,000/- wherein Rs.50,000/- was to be kept with the Sarpanch of the Gram Panchayat to defray proposed partition proceedings and in addition defendant paid a sum of Rs.50,000/- out of the amount due towards the plaintiffs. The suit was to recover the balance.

6. The defendant in response to the suit filed written statement denying altogether execution of the agreement dated August 25, 2007 and also denied that he was a constituted power of attorney of the plaintiffs. However, the agreement was duly proved by PW-1 Daya Singh and PW-3 Parvinder Singh marginal witnesses of the said agreement in their depositions in the stand. Both of them deposed that the agreement was

executed inter alia by defendant Sher Singh admitting his liability to pay a sum of Rs.3,93,000/- to Gurlal Singh plaintiff in the presence of the witnesses. These witnesses were cross-examined by the defendant at length but their testimony was not shaken and the court of first instance found the testimony to be natural and one which inspires confidence. PW-2 Gurlal Singh has also proved the said agreement as Ex.P-1 being one of the executants of the agreement. The court held that Ex.P-1 stands proved on record and so also the registered power of attorney. While both the documents stand proved in evidence, the defendant did not assert that he has not paid the amount as per terms and conditions of the agreement. Rather, he denied the very execution of the agreement and the power of attorney and instead set up a defence from within the terms of the agreement Ex.P-1 of the year 2007.

7. There were three conditions stipulated there, Firstly, defendant Sher Singh had agreed to pay a sum of Rs.3,93,000/- to the plaintiffs but the payment was conditional after deducting the theka/lease money along with the interest @4% for a period of one and half years to be paid to the sister of the plaintiffs and the defendant, namely, Ranjit Kaur. Secondly, the condition was that a sum of Rs.50,000/- which was to be kept with Sarpanch Chanan Ram towards expenditure which may be incurred in the partition of the land. The amount of money promised to Ranjit Kaur had not been paid; the land has not been demarcated; the theka/lease money for the next period was not been assessed and paid to Ranjit Kaur and Thirdly, the condition regarding partition of land has not been complied with since partition among co-sharers has not taken place. The three conditions precedent are

not satisfied and, therefore, defendant is not liable to pay any money to the plaintiffs other than the two amounts which had been complied with.

8. The trial court read the agreement and found that non-compliance of the three conditions would not result in absolving defendant's liability to pay a sum of Rs.3,93,000/- as there was no such term upon which the payment rested. He himself had partly acted on the agreement by depositing a sum of Rs.50,000/- with the Sarpanch. Therefore, I would say he could not approbate and reprobate at the same time and in the same breath. The defence was wholly wrong and inequitable, if it did not amount to cheating.

9. On these premises, the suit has been decreed and the plaintiffs have been held entitled to recover a sum of Rs.3,00,000/- along with interest @ 10% per annum from September 01, 2007 till the realization of the entire decretal amount.

10. Aggrieved by the decree, the defendant preferred an appeal before the learned Additional District Judge, Jalandhar who has declined the same on April 10, 2014 by re-affirming the findings of the learned trial court after re-appreciating the evidence on record. Much of the work of the court of first appeal is a repeat performance of what the trial court found and nothing new has been added nor was required in the simplicity of the facts in issue. Defendant had appropriated the balance amount of sale consideration to himself which he failed to discharge and return the money over which he had no right to retain in his pocket. The courts *a quo* have corrected the wrong done with interest. This court can do no better than to affirm the findings recorded of both the courts *a quo* arrived at after appreciating the evidence available on record and would rubbish the defence of the

defendant as a gross misreading of the agreement and of trying to propound a theory which is highly improbable in the setting of this case.

11. There is another argument raised by the appellant which deserves attention; pleading that the suit was barred by time since the sale deed was registered in the year 2003 and the suit was instituted in the year 2008 for mandatory injunction for direction to recover refund/repay/return the sale consideration accepted by the defendant on behalf of the plaintiffs acting as their duly constituted attorney. The argument at first flush is attractive. Most certainly the suit was filed beyond the prescribed period of limitation of three years on a money claim. There may appear to be a bar of limitation but the compromise agreement was in writing acknowledging liability but explaining reasons why the compromise could not be given effect to base on the three conditions [supra]. However, the acknowledgement to come within the exemption of section 18 of the Limitation Act, 1963 has to be an acknowledgment in writing and how the provision works is that it will operate only, and to quote: “Where before the expiration of the prescribed period for a suit or application in respect or any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed,...”. An acknowledgment in writing of debt beyond expiration of the period of limitation amounts to very little and does not create a fresh cause of action or extend it. The remedy stands extinguished if a suit for recovery of money were instituted after the period prescribed. It is trite law that there is no power to extend limitation in suits except within the exclusions in Part III of the Limitation Act when they apply. But this is so far as a suit of

recovery of money is concerned.

12. But the plaintiffs did not file a suit for recovery based on the cause of action which accrued on the date of sale in the year 2003 when sale money was not handed over to them by the defaulting defendant. The suit was for mandatory injunction to enforce the compromise agreement entered voluntarily between the parties outside the court in the year 2007 but flowing from the same transaction of sale. The question of acknowledgment would not arise in the case. Neither did the plaintiffs stand for relief on the broken crutches of accrual of the cause of action and the right to sue arising for the first time in the year 2003. The limitation would then start anew from the date of the compromise agreement which was an independent cause of action and could be legally enforced. The civil court would have the discretion within section 39 of the Specific Relief Act, 1963 to grant a mandatory injunction to compel performance of the requisite acts to alleviate substantial mischief if money were not returned to the true owners by virtue of the fresh agreement in writing of the year 2007 which had bound down the defendant to his own will and obligations voluntarily incurred when the factum of agreement was proven by evidence adduced on record.

13. In cases where parties compromise their disputes by out-of-court settlements, then such compromises I tend to think are per se enforceable independently in a court of law, even when the limitation with respect to the original cause of action has expired and becomes subject matter of a fresh cause of action with a right to sue all over again. The court is not precluded then to give effect to such an independent and voluntary agreement which

parties have devised for themselves to put an end to their disputes or differences forever. This may be an acknowledgment of an old debt barred by limitation when it is not a continuing cause of action but the exemption in section 18 of the Limitation Act, 1963 will have no role to play when a fresh [not a continuing one] cause of action has been forged with full dress rehearsal. Therefore, I hold that the suit for mandatory injunction to enforce the compromise was within limitation having been filed within the time prescribed when the meter was put down by the hand of the defendant to run a fresh lap.

14. For the many reasons recorded above, I have absolutely no reason to differ with the findings of the lower courts arrived at on facts of the case and the applicable law in relation to the issues framed for trial.

15. No question of law, much less substantial arises in this appeal for consideration.

16. The appeal stands dismissed in limine.

(RAJIV NARAIN RAINA)
JUDGE

20.07.2015
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