

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

(1) CM No. 9696 C of 2014 and
RSA No. 4186 of 2014 (O&M)
Date of decision: August 25, 2015

Harbans Singh

...Appellant

Versus

Bachan Singh and others

...Respondents

(2) CM No. 10269 C of 2014 and
RSA No. 4443 of 2014 (O&M)

Harbans Singh

...Appellant

Versus

Bachan Singh and others

...Respondents

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?

Present: Mr. HNS Gill, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. This judgment shall dispose of the above two titled appeals, as the same have arisen out of the same set of facts.

2. Stale and untenable appeals are what are brought before this court on equally untenable contentions. There are applications to condone the delay of more than 24 years in preferring the second appeals. I wanted to assure to myself if there was really something substantial for a person to approach this Court after such a long delay but shockingly, I find that there are simply no merits in the appeals. Rather, it is utter abuse of process of

court to prefer appeals with such applications. First the merits and then the ground urged for condonation of delay so that the party goes back that he was not condemned unheard. He was heard but pitifully, he has no case to come to this Court.

3. The suit had been filed by the plaintiffs Jaswant Kaur and the appellant Harbans Singh, who are mother and son respectively to challenge a sale that they had made after the death of the 1st plaintiff deceased, husband Inder Singh in favour of the latter's brother. The sale was reported to have been made on 20.7.1966 and the suit came to be instituted on 15.6.1987 after 21 years of sale contending that the 1st plaintiff thinking that she has given power of attorney in favour of the brother-in-law but it turned out that the brother-in-law had taken a purchase from him. The trial court dismissed the plaintiffs claim and allowed for the claim of the 2nd plaintiff on the ground that he was only five years of age at the time of execution of the sale and, therefore, the sale cannot bind him. Against this judgment, appeals had been filed both by the 1st plaintiff and the defendant. The Appellate Court passed a judgment on 12.11.1991 dismissing the appeal filed by Jaswant Kaur and allowing the appeal filed by the defendant to deny the right given to the 2nd plaintiff. The decision had been delivered, according to the counsel, in the absence of the parties and recently when the appellant applied for mutation in his name on the basis of the judgment of the trial court, he was informed that a judgment had been passed on 12.11.1991 disallowing for any right in the property and that was the starting point for him to know that the judgment which went against him had been passed without addressing the legal issues correctly and hence he has come in the second appeals in this Court.

4. A transaction of sale made in the year 1966 by the mother for herself and on behalf of her son, who was minor at that time, could not have been at the first place challenged 25 years later. The suit was ex-facie barred by limitation. A transaction brought about by fraud must be taken as a transaction that would require to be set aside and valid till a decree is passed setting aside such transaction. In the absence of father, mother alone was the legal guardian. A sale by a legal guardian even for a child is not void at law but voidable. As far as she was concerned while the suit must have been filed within three years from the date she gained knowledge of fraud, as far as a quondam minor was concerned, the right must have been exercised within three years from the date of attaining majority, for, the transaction, as I observed was required to be set aside as voidable. The Appellate Court was, therefore, justified in holding that the suit by Harbans Singh could not have been maintained to set aside the sale when he was himself 24 years of age having crossed 18 years age more than 3 years before the institution of the suit. The Appellate Court was again justified that there was no fraud practiced in the manner that the trial court itself found and allowed the appeal of the defendant upholding the sale as far as the 2nd plaintiff was concerned and rejecting the appeal of the 1st plaintiff's claim as clearly barred by law.

5. The case ought to have concluded there and for a party to complain that the case was disposed of in his absence, he is literally asking for an unusual privilege as though for a party who stays at Bombay or at any other part of the world there is no period of limitation. Courts can not wait for a party to arrive at his convenience and expect the case to be taken at his beck and call. As difficult as we experience in courts problems for early

disposal, no party can suppose that if he prefers an appeal, the Court will arrive at his door steps and solicit his presence in the court to make his arguments. If he has been so indiscreet in staying away for whatever reason in Bombay, it will be purely foolhardy for a person to state that he took another 20 years to file an application for mutation of revenue entries in his name. The first thing which ought to have been done after preferring the appeal was to find out what happened in the court and cannot assume that the decree passed in the trial court in his favour could not have been modified in appeal. The plaintiff cannot act like proverbial cat closing its eyes and believing that the whole world has come to darkness. A vigilant litigant is the only person who can be supported in courts. The appellant's own conduct in approaching the authorities for mutation 25 years later will betrays an utter sense of negligence on his part, which cannot be a ground for condoning the delay.

6. There was not even any point worthwhile to make arguments. It is astonishing that the appellant will test the courts time for bringing a worthless cause that no legs to stand. I will only spare exemplary costs for the appellant because I have not called the respondents to join issue and waste their money. The appeals are dismissed. The applications for condonation of delay are dismissed as totally devoid of merit. I would only hope and wish that curtains are down for the appellant but only time will tell whether such a type of adventurist litigant will be rested or go for a lucky filing elsewhere.

7. Both the applications for condonation of delay as well as the appeals are dismissed.

August 25, 2015
prem

(K.KANNAN)
JUDGE

