

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

DATE OF DECISION: AUGUST 17, 2015

Bishamber Dayal

.....Appellant

VERSUS

Subhash Chand and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. Aayush Gupta, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

This Regular Second Appeal has been preferred by the appellant-plaintiff, who sought a decree of declaration and joint possession with consequential relief of permanent injunction against the respondent-defendants on the ground that respondent-defendant Nos.1 to 3 were joint owners in possession of 1/5th share of land measuring 94 kanals 2 marlas located in Village Khalilpuri, Tehsil and District Rewari as per jamabandi for the year 1986-87 with Khewat No.35/19 and in Jamabandi for the year 2001-02 it was mentioned as Khewat No.44/38.

Appellant-plaintiff purchased 320/1882 share i.e. 16 kanals out of the total land measuring 94 kanals 2 marlas from defendant-respondent Nos.1 to 3 vide sale deed dated 21.07.1992 for a consideration of

₹1,98,000/- and as a consequence thereof he became the owner of the said share and remained in joint possession of the suit land as joint owner. The share owned by the appellant-plaintiff was being cultivated by him through one Krishan Chand son of Rati Ram, resident of Village Khalilpuri. Said Krishan Chand informed the appellant-plaintiff that respondent-defendant Nos.4 to 6 had forcibly taken possession of the suit land, which was in his ownership and possession. When contacted, he was informed by respondent-defendant Nos.4 to 6 that they had purchased the said suit land, for which even a decree dated 09.09.1987 has been passed by the Civil Court, which persuaded the plaintiff-appellant to challenge the same by filing the suit. The trial Court dismissed the suit by judgement and decree dated 17.02.2011. The appeal preferred against the said judgement and decree also stands dismissed by the Additional District Judge, Rewari, on 17.09.2014. Hence, this Regular Second Appeal.

It is the contention of counsel for the appellant that the appellant-plaintiff is a bonafide purchaser of the property in question and, therefore, his suit for declaration should have been decreed. It is further contended that the findings recorded by the courts below with regard to the competence of defendant No.1, Subhash Chand to execute the sale deed dated 21.07.1992 in favour of the appellant-plaintiff regarding his share of suit land, cannot be sustained as the respondents have not been able to prove that he did not have the title to the suit land. Assertion has also been made that the findings recorded by the courts below with regard to the suit being barred by limitation also cannot be sustained as the cause of action arose to the appellant-plaintiff in the year 2004, when he was dispossessed from the land by respondent-defendant Nos.4 to 6 and thereafter he had

immediately filed the suit, challenging the sale deed dated 06.12.1999, the Civil Court decree dated 09.09.1987 and also sought restoration of the possession of the suit land. He, on this basis, contends that the judgements and decrees passed by the courts below deserve to be set-aside and the suit of the appellant-plaintiff decreed.

I have considered the submissions made by counsel for the appellant-plaintiff and have gone through the judgements and decree passed by the Courts below with the assistance of the counsel.

A perusal of the judgements and decree passed by the courts below show that the appellant-plaintiff has failed to establish that as to how he had come into the possession of the suit land as there has been no partition of the land. It is admitted that the land, which has been bought by the appellant-plaintiff, was from a co-sharer and, therefore, the possession of specific land could not have been handed over to him. It is established position in law that a vendee from a co-sharer is entitled for possession through partition only. In this regard reference can be made to the judgement passed by this Court in Ram Murti Sharma and another Vs. Prem Kumar and others, 2011 (2) Civil Court Cases 570 (P&H), on which reliance has rightly been placed by the Courts below.

It is not in dispute that the decree dated 09.09.1987 passed by the Civil Court in favour of respondent-defendant Nos.4 to 6 is much prior to the sale deed dated 21.07.1992 entered into between respondent-defendant No.1, Subhash Chand. In the light of the decree, defendant Nos.4 to 6 had already become owners in possession of the land of the share of respondent-defendant No.1, Subhash Chand and, therefore, he was left with no title or interest in the suit land and, thus, the sale deed dated 21.07.1992

regarding his share in favour of the appellant-plaintiff was without jurisdiction and Subhash Chand could not have conferred any valid title in favour of the appellant-plaintiff. Thus, the conclusions drawn by the courts below cannot be said to be vitiated.

Findings with regard to the sale deed and the sale of the share of respondent-defendant Nos.2 and 3, Sheela and Meena, sisters of defendant-respondent No.1, Subhash Chand, in favour of the appellant-plaintiff by him vide sale deed dated 21.07.1992 is also in accordance with the evidence brought on record. Further the findings that Meena was minor at the time of execution of the said sale deed and that Sheela was a minor at the time of execution of the power of attorney dated 24.01.1990 in favour of her brother Subhash Chand, on the basis of which the sale deed dated 21.07.1992 was executed, also cannot be faulted with.

The findings of the Courts below that the suit is barred by limitation also cannot be said to be incorrect or illegal as the appellant-plaintiff has not been able to prove that he was in possession of the suit land and, therefore, should have filed a suit for possession/partition after the sale deed was executed in his favour. Instead he waited for the execution of decree dated 09.09.1987, which resulted in the execution of sale deed dated 06.12.1999 by Subhash Chand in favour of respondent-defendant Nos.4 to 6 and the challenge to the decree and the sale deed was initiated by filing suit on 20.07.2004, which is beyond the period of three years and, therefore, the findings recorded by the courts cannot be faulted with.

From the above, it is apparent that both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in

the same. Further, no substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

August 17, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE