

119.

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

Civil Revision No.2884 of 2016

Date of decision:26.04.2016

Smt. Raj Bala

... Petitioner

versus

Charan Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajbir Sehrawat, Advocate,
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The petitioner is the defendant in suit. In a suit for a declaration filed by the plaintiff for a relief that a decree obtained by the defendant against his vendor Rambir was collusive and not binding, he had also sought for a relief that the defendant's own vendor Bihari was not competent to sell and that a decree obtained by him was not valid. There was also a prayer that the sale deed by Bihari in favour of the defendant said to have been made in March, 2008 was not valid. The defendant had moved a petition for rejection of the plaint on 3 grounds: (i) the suit was barred by *res judicata*; (ii) the suit was barred by limitation; and (iii) there was no

proper payment of court fee for the relief sought in the suit. The court had dismissed the application filed for rejection and the aggrieved defendant is the petitioner before this court.

2. On the issue of whether the suit was barred by *res judicata*, it must be seen that the earlier suit filed by the plaintiff was against the present petitioner's husband who is still alive. The suit was for a bare relief of injunction and the earlier suit against the petitioner's husband cannot operate as *res judicata*, for, it cannot be taken as a decision between the same parties or persons claiming through them. The second objection is that the suit is barred by limitation. As far as the sale in favour of the defendant is concerned, the plaintiff himself is not a party and a prayer that the sale is not valid ought to be taken as euphemism that the sale is not binding on the plaintiff. It does not require to be set aside. The issue of date of knowledge of the sale is also therefore irrelevant. As far as the contention that the decree obtained by the defendant against his vendor Rambir, admittedly, the decree was passed in the year 2011 and the suit has been within a period of 3 years and hence, any transaction to set aside a decree as a vitiating ground as set out could be filed within a period of 3 years. It cannot be, therefore, taken as barred by limitation.

3. There is also a plea that the purchase by the defendant's vendor in the year 1975 is not valid. It is another way of saying that

he is not bound by such purchase and the vendor did not have title to convey. It does not require to be set aside and the prayer must be understood as a challenge to the title and not a transaction that would require to be set aside.

4. If the plaintiff seeks for reliefs on a plea that he is himself in possession and does not seek for recovery of possession, the plaintiff is entitled to value the relief of declaration under Section 7(iv) of the Court Fees Act and there is no need for an ad valorem court fee on a valuation on the property.

5. None of the objections for rejection of the plaint was tenable and rightly dismissed by the court below. There is no scope for intervention. The revision petition is dismissed.

(K.KANNAN)
JUDGE

26.04.2016
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