

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4594 of 2009 (O&M)

Date of Decision: September 29th, 2016

Saroj (deceased) through L.Rs.

...Appellant

Versus

Rajpal Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Amarjit Singh Virk, Advocate,
for the appellant.

Ms.Sharmila Sharma, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree of the Lower Appellate Court, whereby the appeal filed by respondent-defendant No.1 has been allowed and the judgment and decree of the trial Court decreeing the suit, has been set-aside.

Mr.Amarjit Singh Virk, learned counsel for the appellant-plaintiff submits that defendant No.2 Shiv Kumar, who is none else but husband of the plaintiff had, by virtue of the judgment and decree dated 1.2.1995, transferred the property in dispute in favour of the appellant-plaintiff, but yet vide sale deed dated 19.4.1996 sold the property in dispute to defendant No.1. By realising the aforementioned fact, suit was filed on 1.3.2001. Any sale deed, which is a nullity as defendant No.2 was not having any right in the suit land, can be challenged at any point of time when the aforementioned fraud surfaced. There is a specific averment in the

suit that the possession was taken in the month of January, 2001 and, therefore, the suit was filed and, thus, urges this Court for setting-aside the findings of the Lower Appellate Court qua the suit being barred by law of limitation as limitation for possession is twelve years, vis-a-vis declaration that the sale deed is totally erroneous, much less fallacious.

Per-contra, Ms.Sharmila Sharma, learned counsel for respondent No.1 submits that as per the sale deed, there is a recital that defendant No.1 was put in possession of the suit land and cultivating the same, which fact has been reflected in the jamabandi for the year 1999-2000, thus, it could not even be emerged that the plaintiff was not aware of the sale deed. The limitation to challenge the sale deed is three years, therefore, by seeking relief, appellant-plaintiff has sought challenge to the sale deed, which is barred by law of limitation. All these factors have been taken care of and, therefore, there is no illegality and perversity, much less any substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of Mr.Virk, for, defendant No.1 did not have any title or interest in the suit property and, therefore, the sale deed dated 19.4.1996 was held nullity in the eyes of law. It is not the preliminary relief, but the secondary relief. Vis-a-vis the possession, the limitation is twelve years. It is settled law that where the person acquires the knowledge, the limitation would start from the date of knowledge till three years, thus, the objection of Ms.Sharma is not tenable and hereby rejected. The trial Court, on the basis of the aforementioned fact, had rightly decreed the suit, but the Lower Appellate Court has committed illegality.

No doubt, this Court, on earlier occasions, had been framing the substantial questions of law while deciding the appeals, but the Constitutional Bench of Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213** wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

For the foregoing reasons, the judgment and decree of the Lower Appellate Court is not sustainable being perverse and the same is hereby set-aside, whereas that of the trial Court is restored. Suit is decreed.

Since appellant-plaintiff, *prima-facie*, has been duped by defendant No.2, defendant No.1 shall be entitled to seek damages, if permissible in accordance with law.

Appeal stands allowed.

September 29th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No