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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1121-2011 (O&M)
Date of decision : 16.08.2016

Pal Singh

... Appellant

Versus

Joginder Kaur and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Bhatia, Advocate
for the appellant.

Mr. B.R. Mahajan, Senior Advocate with
Mr. Parteek Mahajan, Advocate
for the respondent No.1.

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?

AMIT RAWAL, J. (ORAL)

CM-13208-C-2011

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the documents i.e. certificate of encumbrancers with regard to the property in question for the period 06.03.1983 upto 05.03.1995 and for the period 06.03.1983 upto 31.03.1997 are taken on record subject to all just exceptions.

CM stands disposed of.

RSA-1121-2011

The appellant-defendant No.2 is aggrieved of the concurrent findings of fact, whereby the suit for declaration with consequential relief of mandatory injunction and permanent injunction qua possession and creation third party right/alienation has been decreed.

Mr. G.S. Bhatia, learned counsel appearing on behalf of the appellant-defendant No.2 submits that defendant No.2 purchased the property in dispute vide sale deed dated 05.08.1994 after inspecting the revenue record i.e. jamabandi (Ex.PW5/6), whereas the mutation in favour of the erstwhile owner-Baljit Kaur-defendant No.1 had been entered into and therefore, the Courts below ought to have granted the protection/benefit of Section 41 of the Transfer of Property Act. Baljit Kaur vide sale deed dated 01.03.1994 had purchased the property from Joginder Kaur-plaintiff. The non-encumbrance certificate had also been obtained. The requirement by *bona fide* purchaser had been complied to the hilt, yet the Courts below non-suited the appellant-defendant No.2.

He further submits that the suit filed in the year 1998 was not maintainable being barred by law of limitation. In order to lend support the aforementioned submission, he has drawn the attention of this Court to the specific averments in the plaint, to contend, that concededly the husband of the respondent-plaintiff was discharged in the month of July 1996, but in fact he was released on 17.01.1995. By that time, two years were left for filing the suit, but no effort was made to ascertain as to whether the misrepresentation and fraud had been played upon or not, in essence, the plaintiff was not in possession of the suit property, whereas on the contrary, defendant No.2 had submitted an application for sanctioning of building plan and on sanctioning, raised the construction and everything was done in the her presence and yet, the Courts below non-suited on this ground. Baljit Kaur is none-else, but the daughter-in-law of the plaintiff, who connived with the plaintiff by filing a written statement, but did not appear, after

submitting her affidavit, for cross-examination as DW-1. All these factors are essential and necessary to be considered by this Court for forming an opinion different than one formed by the Courts below as there is a gross-misreading and misdirection of the oral and documentary evidence. In support of his contentions, he relies upon the judgment of this Court in “Chanan Singh and others V/s Smt. Salwant Kaur and others” 1996 (1) Civil Court Cases 0390, thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. B.R. Mahajan, learned Senior Counsel assisted by Mr. Parteek Mahajan, learned counsel appearing on behalf of the respondent No.1-plaintiff submits that the suit had been filed within the provisions of Article 56 of the Indian Limitation Act. The handwriting expert has given an opinion that the sale deed dated 01.03.1994 did not bear the thumb-impressions of the plaintiff-Joginder Kaur. He has drawn the attention of this Court to the original record of the trial Court i.e. thumb impressions on the plaint and as well as on the sale deed to demonstrate that there is a stark difference/variation of the ridge regarding the thumb impression. On the contrary, defendant No.2 had not examined any Expert to dispel the aforementioned evidence.

He further submits that non-encumbrance certificate (Ex.PA) dated 07.03.1995 cannot be said to be within the expressions *bona fide* purchaser as the sale deed is of 05.08.1994. Meaning thereby the alleged encumbrance certificate is after the date, therefore, the appellant-defendant No.2 cannot take the benefit of the provisions of Section 41 of the Transfer of Property Act. The limitation is never taken from the date of mutation,

but when there is a cloud on the title or the possession. There is a categoric pleading in the plaint regarding the relationship of defendant No.2 with the police officials which has not emphatically and specifically denied except vague denial, even, the status of Baljit Kaur being wife of Baldev Singh, who had remarried after the demise of her first husband Surjit Singh has also not been denied. Baldev Singh was also working as Police Officer. There was an apparent collusion of the police official in grabbing the property from the respondent No.1-plaintiff. In support of his contentions, regarding the limitation, he relies upon the judgment of this Court in “Ibrahim @ Dharam Vir V/s Smt. Sharifan @ Shanti” 1979 PLJ 469, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book. There is no dispute to the ratio decidendi culled in the judgment rendered by this Court in “Chanan Singh's case (supra) and each and every case has to be seen. The Article 56 of the Indian Limitation Act would apply to the facts and circumstances of the case as the pleadings in the plaint have to be read. There is a categoric pleading in the plaint with regard to the mis-representation and fraud being played upon the respondent No.1-plaintiff. For the sake of brevity, Article 56 of the Limitation Act reads thus:-

Description of suits	Period of limitation	Time from which period begins to run
To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff.

It is a conceded position on record that the husband of the respondent No.1-plaintiff was released on 17.01.1995 though discharged on

23.07.1996, but the fact remains that the family was totally traumatized and under the fear, owing to the excesses of the police as per the pleadings and the orders brought on record. The appellant-defendant No.2 cannot be branded as a *bona fide* purchaser as the non-encumbrance certificate is dated 07.03.1995 (Ex.PA). The limitation would reckon from the date of the acquisition of the knowledge of fraud and misrepresentation and there is a specific pleading in the plaint that the husband had made enquiry and after enquiry, came to know about the sale dated 01.03.1994 allegedly executed by the respondent No.1-plaintiff in favour of defendant No.1, even defendant No.1 filed a written statement denying of having executed any sale deed in favour of defendant No.2. If at all the appellant-defendant No.2 had any grievance, he could have also summoned her as witness for the purpose of ascertaining the truth. The appellant-defendant No.2 has also not taken the service of document Expert. It is a settled law that the document expert toe to the line of the party who engages him, this Court cannot remain as a mute spectator. I have gone through the original record and found that there is a stark difference between the thumb-impressions on the sale deed and as well as on the suit and there is a ridge on the thumb impressions and the suit was filed only few years after the execution of the sale deed, so there could be any variation in the thumb impressions, in my view, the appellant-defendant No.2 has failed to bring the case within the realm of illegality and perversity, much less, misconstrual and misreading of the evidence.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts which are based based upon the

appreciation and preponderance of oral and documentary evidence, much less, no substantial question of law arises for determination and the appeal is, resultantly, dismissed.

16.08.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No