

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

1. RSA No.3588 of 2011 (O&M)
Date of decision : 08.11.2016

Mukhtiari (since deceased) through her LRs and others

...Appellants

Versus

Om Kumar and others

..Respondents

2. RSA No.3589 of 2011 (O&M)
Date of decision : 08.11.2016

Mukhtiari (since deceased) through her LRs and others

...Appellants

Versus

Gian Chand and others

..Respondents

3. RSA No.3590 of 2011 (O&M)
Date of decision : 08.11.2016

Mukhtiari (since deceased) through her LRs and others

...Appellants

Versus

Rakam Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Anil Kshetarpal, Sr. Advocate with
Mr. Piyush Aggarwal, Advocate for appellants.

Mr. Avnish Mittal, Advocate for respondents.

AMIT RAWAL, J. (Oral)

**CM Nos.3436-C of 2015 in RSA No.3589 of 2011, 3437-C of 2015 in
RSA No.3590 of 2011 and 3445-C of 2015 in RSA No.3588 of 2011**

For the reasons stated in the applications, which are duly supported by affidavits, LRs of Jai Singh as mentioned in the applications are ordered to be brought on record, for the purpose of prosecuting the present appeals.

Applications stand allowed, subject to all just exceptions.

Main cases

This order of mine shall dispose of three aforementioned regular second appeals.

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit seeking declaration that consent decree dated 29.07.1991 in favour of defendant Nos.1 to 7 was result of fraud and misrepresentation, has been dismissed by the lower Appellate Court, in essence, judgment and decree of the trial Court decreeing the suit, has been reversed.

Mr. Anil Kshetarpal, learned Senior Counsel assisted by Mr. Piyush Aggarwal, learned counsel appearing on behalf of appellant-plaintiff

submits, that there was specific averments in the plaint that Mukhtiari appellant-plaintiff was taken to the Court for the purpose of executing the GPA in favour of her brother to manage the property as son of the brother-in-law Soran asserting right in the property, much less, caused interference. The land in dispute is measuring 53 kanals 8 marlas. Acquisition of the aforementioned fraudulent consent decree was in the year 1996 i.e. on 21.08.1996 and 16.10.1996 when the property was sold by the defendant No.1 to the subsequent vendee. Accordingly, the suit on 30.10.1996 was filed with promptitude. Courts below noticing all the facts, decreed the suit but the lower Appellate Court had erroneously reversed the findings and without noticing the fact that ingredients of Order 6 Rule 4 CPC has been proved to the hilt. The averments in the previous suit/plaint, which has been annexed as P-1, reflects the nature of the property to be of joint hindu family property whereas factually it was incorrect as the property was inherited by her from her husband and, therefore, it would not have character as indicated above, much less, question of entering into the family settlement was nothing but an attempt to wriggle out of the provisions of the Registration Act. No doubt the property had changed hands but the fact remains that suit cannot be said to be belated and in fact was within the provisions of Article 59 of the Limitation Act. The reasons assigned by the lower Appellate Court is totally alien to the oral and documentary evidence, much less, pleadings, thus, there is gross illegality and perversity and judgment and decree requires to be set aside.

Mr. Avnish Mittal, learned counsel appearing on behalf of respondents and few of the subsequent vendees submits that valuable right

had accrued in favour of his clients, who are none else but the bona fide purchasers for total sale consideration. Sale deed is prior in time i.e. prior to the filing of the suit. Property was purchased by verifying the title and, therefore, sale deed could not have been set aside and rightly so, the lower Appellate Court has reversed the findings. Ingredients of fraud and misrepresentation have not been proved and urges this Court for affirming the findings under challenge.

I have heard learned counsel for parties and appraised the paper book and of the view that there is no merit and force in the submission of Mr. Anil Kshetarpal, for, appellant-plaintiff has miserably failed to prove the ingredients of fraud. Neither the lawyer engaged in the previous round of litigation nor any services of expert for comparison of the thumb impression/signatures on the vakalatnama and written statement had been taken, that was essential requirement of law to succeed in case. In my view, there is failure in discharging the onus. Even after the decree, the possession was also of the defendant Nos.1 to 7 and this fact was in the knowledge of the plaintiff yet filed the suit in 1996. No doubt, the mutation does not confer the title. Suit can be brought within a period of three (3) years from the date of acquisition of the knowledge as sale deed noticed above was effected in the year 1996. Be that as it may, the Court had not taken into consideration the applicability of the Limitation Act and I am also of the view but having failed to prove the same ingredients, thus, filing of the suit is nothing but an Act of aggrandizement.

For the reasons aforementioned, I do not intend to differ with the findings rendered by the lower Appellate Court.

No ground for interference is made out, much less, no substantial question of law arises.

Accordingly, all the appeals are dismissed.

08.11.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No