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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3142-2012 (O&M)

Date of decision : 21.04.2016

Suresh and another

... Appellants

Versus

Wazir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anoop Singh Sheoran, Advocate for
Mr. Ravinder Hooda, Advocate
for the appellants.

Mr. A.K. Kansal, Advocate
for the respondents.

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)

The appellants-plaintiffs are aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit for declaration and consequential relief of permanent injunction has been dismissed, in essence, the judgment and decree of the trial Court decreeing the suit has been set aside.

It has been argued that by virtue of the consent decree dated 11.12.1991, the plaintiff became the owner of 1/8th share in respect of land measuring 265 kanals 19 marlas. The sale deed executed by Harnand (defendant No.3) on 03.07.2002 in respect of 1/8th share out of the same chunk of land being illegal, null and void. The trial Court on the basis of oral and

documentary evidence decreed the suit by negating the plea of registration of the decree. The trial Court found that since, Harnand was not the owner and having title in the property, he could not alienate the property by way of the sale deed, aforementioned, thus, urges this Court to set aside the judgment and decree of the lower Appellate Court by restoring back the judgment and decree of the trial Court.

Mr. Ajay Kansal, learned counsel appearing on behalf of the respondent(s)-defendants(s) submits that the suit filed on 09.12.2005 challenging the sale deed dated 03.07.2002 was *ex facie* time barred, even otherwise, the entire revenue record did not reflect about the consent decree aforementioned. Whereas on the contrary, vide Ex.D-3 and D-4, it has been proved on record, that in the year 1995-96, Harnand sold the land measuring 8 kanals to different vendees and the aforementioned sale deed was not effected, even the consent decree had become un-executable. All these facts have been noticed by the lower Appellate Court while dismissing the suit, thus, there is no illegality and perversity and urges this Court for affirmation of the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the suit for setting aside the sale deed dated 03.07.2002 filed on 09.12.2005 was *ex facie* time barred by law of limitation. The period for setting aside the consent decree is three years. No explanation has come forth in not challenging the sale deed within the aforementioned period. Even the trial Court in paragraph 19 gave a finding that the possession of the property is of the respondent(s)-defendant(s). In the absence of relief of possession, limitation cannot be arrested and the appellant(s)-plaintiff(s) have lost the right to recover the possession.

There is another aspect of matter, that as per Ex.D-3 and D-4, the sale deed as noticed above has not been challenged, in essence, the appellant(s)-plaintiff(s) acquiesced with regard to such act vide which, their father had sold the land to the different vendees.

Keeping in view the aforementioned facts and circumstances of the case, no ground is made out for interference in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination and accordingly, the judgment and decree of the lower Appellate Court is affirmed.

With the aforesaid observations, the appeal stands dismissed.

21.04.2016
yogesh

(AMIT RAWAL)
JUDGE