

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 114 of 2013 (O&M)

Date of Decision: 15.02.2016

Balbir Kaur and Others

... Appellant(s)

Versus

Jagpal Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. K.S.Boparai, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of both the Courts below, whereby suit of plaintiffs for declaration was partly decreed and appeal filed by them was dismissed.

For the sake of convenience, parties are being referred to as per their status before the Court of first instance.

Relevant facts for the purpose of decision of the appeal that plaintiffs had filed suit for declaration that they are owner in possession of 3/4th share (1/4th share each) of the suit land. Plaintiffs also sought declaration that sale deed dated 7.11.1990 allegedly executed by Surjit

Singh is illegal, null and void and same does not confer any right, title or interest upon defendant No.5 and for joint possession of the land.

As per plaintiffs, Surjit Singh died on 27.11.1990 leaving behind plaintiffs and defendants No.1 to 5 and Smt. Jagir Kaur as his natural legal heirs. Plaintiffs are the daughters of deceased Surjit Singh. Defendants No.1 to 5 are the children and widow of deceased Jang Singh. Smt. Jagir Kaur (mother) also died intestate, therefore, her share had also been inherited by the plaintiffs and defendants No.1 to 5. As per plaintiffs, they have become owner to the extent of 1/4th share and defendants No.1 to 5 are collectively entitled to 1/4th share in the property left behind by Surjit Singh. As per plaintiffs, they came to know in the month of June, 1999 that defendant No.6 had been claiming title to the plot on the basis of sale deed dated 7.1.1990, whereas no such sale deed was ever executed by Surjit Singh. Defendant No.6 contested the suit taking the plea that Surjit Singh had executed sale deed in his favour with his free consent and for valuable consideration. He was a bonafide purchaser of the land in dispute. Earlier, Surjit Singh had mortgaged the land in question in his favour as he was in need of the money. He denied the allegation that thumb impression of Surjit Singh was obtained on the sale deed and mortgage deed, when he was under intoxication. The sale deed in question was in the knowledge of the plaintiffs. Earlier, defendants No.1 to 4 had filed a suit challenging the sale deed and the matter was settled and defendants No.1 to 4 withdrew the suit and an application under Order 1 Rule 10 CPC was filed and the said suit is still pending. An objection

was raised that present suit is barred as per the provisions of Order 2 Rule 2 CPC and suit deserves dismissal.

The Court below settled the issues and parties were asked to lead their respective evidence. However, the Court of first instance, after appreciating the entire evidence and came to the conclusion that plaintiffs failed to prove that the sale deed was the result of fraud or misrepresentation. The Court of first instance observed that the sale deed was executed by Surjit Singh on 7.11.1990 and he remained alive till 27.11.1990. During his life time, he had not challenged the sale deed. The sale deed was duly registered. The limitation period of challenging the sale deed started to run from the date of its execution and once limitation period started to run, the same does not stop on any account because of some subsequent developments. The said sale deed was for legal necessity. Even the legal heirs of Surjit Singh were aware of the sale deed. Hence, the Court of first instance dismissed the suit on merits because the sale deed was for legal necessity and to the knowledge of the legal heirs of Surjit Singh and was for valuable consideration. The said sale deed has not been challenged within the period of limitation. The said sale deed also having been challenged in a separate civil suit and plaintiffs had filed an application under Order 1 Rule 10 CPC was accepted and the earlier civil suit is also pending and that way present suit under Order 2 Rule 2 CPC was barred. The Court of first instance partly decreed the suit to the effect that plaintiffs are co-owners to the extent of 3/4th share of the land left behind by Surjit Singh and decree for joint possession to the extent of 3/4th share.

However, as regard sale deed dated 7.11.1990 in favour of defendant No.6, it was duly executed and defendant No.6 is owner of the land. First appeal having been filed by the plaintiffs was dismissed.

Learned counsel for the appellants mainly submitted that the Court below had dismissed the suit on the ground of limitation, whereas present suit was filed within a period of limitation because limitation period in this case started when real threat to the title was apprehended and on that basis suit was filed within a period of limitation. On this point, reliance was placed upon judgment of the Division Bench of this Court in case **Ibrahim v. Smt. Sharifan AIR 1980 Punjab and Haryana 25** and view taken by the co-ordinate Bench of this Court in cases **Lillu v. Ram Kishan 1997(2) Civil Court Cases 352 (P&H)** and **Manti and Others v. Sarwati Devi and Others 2004(1) Civil Court Cases 233 (P&H)**.

Having considered the submissions made by learned counsel for the appellant and relevant facts of the case and view taken by the Division Bench and the co-ordinate Bench of this Court, this Court is of the considered view that concurrent findings of facts have been recorded by the Court below that sale deed dated 7.11.1990 was duly executed for consideration. The said sale deed was a registered document and the same was within the knowledge of the present appellants. Earlier, the suit land was mortgaged with defendant No.6 who is bonafide purchaser. The sale deed was duly executed for consideration and the same has not even been challenged within the period of limitation. Earlier, civil suit was filed at the instance of

defendants No.1 to 4, wherein plaintiffs were asked to implead as party to the suit on an application under Order 1 Rule 10 CPC and as such present suit is not maintainable and is without any merit. There is absolutely no substantial question of law involved in this appeal. Accordingly, present appeal, being devoid of any merit, stands dismissed.

(Shekher Dhawan)
Judge

February 15, 2016
"DK"/anju