

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

**R.S.A No. 3996 of 2013 (O&M)
Date of decision :15.01.2016**

Dushyant Kumar

..... Appellant

Versus

Ajit Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Abhinav Sood, Advocate
for Mr. Vikram Singh, Advocate
for the appellant.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 19.07.2013 passed by the learned Additional District Judge, Panipat, whereby the appeal filed by the plaintiff-appellant against the judgment and decree dated 21.09.2012 has been dismissed.

2. For the sake of convenience, the status of the parties shall be referred as in the original suit.

3. The appellant-plaintiff has filed the suit for declaration to the effect that the sale deed bearing Vasika No. 1986 dated 13.10.1971

executed by defendant no. 2 Ashok Kumar in favour of defendant no. 1 Ajit Singh was illegal, null and void without any legal necessity and is not bindings on the rights of the plaintiff. He also prayed for the consequential relief of permanent injunction restraining the defendants from alienating or transferring the suit land in any manner whatsoever.

4. As per the case of plaintiff, Uttam Chand was the owner in possession of the land in dispute. He died on 05.07.1969. At that time, the plaintiff was a minor and aged about 7 years. Uttam Chand has executed a registered Will dated 12.05.1967 in favour of the plaintiff, defendant no.2 and their two brothers namely Chander Parkash and Ashok Kumar. As per the aforesaid Will, he had divided the land owned by him into four equal shares amongst his four sons. It was further mentioned in the Will that the land already transferred in the names of Chander Parkash and Ashok Kumar will be considered as joint land for the purpose of dividing the land in equal shares. It was further pleaded that defendant no. 2 had sold the land more than his share in favour of defendant no.1 vide impugned sale deed dated 13.10.1971. He was not the owner of the land measuring 10 K-12M comprised of rectangle no. 7 Killa No. 29. He has sold the aforesaid land without any legal necessity. He was also not entitled to sell any specific killa number without getting the land partitioned by metes and bounds. The plaintiff came to know about the impugned sale deed in the month of January 2004 from one Sultan Singh, resident of Naya Gaon, who also told him about the other property owned by his father Uttam Chand at village Siwah Kheri. He pleaded that the defendants have played a fraud with him. Hence he filed the suit for declaration and

permanent injunction.

5. Both the defendants contested the suit by filing the separate written statements. Defendant no.1 pleaded that he is in actual cultivating possession of the suit land since the date of its purchase vide sale deed dated 13.10.1971 for a valuable consideration. Defendant no.2 had acquired the ownership of the suit land much prior to the birth of the plaintiff. He pleaded that he had no knowledge of any such Will allegedly executed by Uttam Chand in favour of his sons. It was pleaded that any such Will was not binding on his rights as he is a bonafide purchaser of the suit land for valuable consideration. Defendant no. 2 was the true owner of the land when he purchased the same vide sale deed dated 13.10.1971. He also denied that plaintiff constituted any joint Hindu family with defendant no. 2. Defendant no. 2 was the absolute owner of the suit land and had every right to alienate or to transfer the same.

6. Defendant no. 2 pleaded that no fraud was committed by him. He was the absolute owner of the suit land and had every right to alienate or transfer the same. Uttam Chand was owner in possession of a large chunk of the agriculture land. He suffered a civil Court decree dated 11.11.1957 in Civil Suit No. 699 of 1957, titled as 'Chanderwati and others Vs. Uttam Chand'. Defendant no. 2 got land measuring 111 Bighas 10 Biswas and mutation no. 979 was also entered and sanctioned in his favour on 23.03.1961. The plaintiff was not even born at that time. Thus, he had no right to challenge the judgment and decree dated 11.11.1957. He also denied any Will dated 12.05.1967 having been executed by Uttam Chand. Rather, Uttam Chand was not the owner of the land for

which the alleged Will had been executed. Some part of the land owned by him already stands transferred in favour of his wife Chanderwati, daughter Leelawati and sons Chander Parkash and Ashok Kumar during his lifetime. He further pleaded about the previous litigation between the brother with respect to the property left by Uttam Chand. It was further pleaded that all the four brothers mutually settled their dispute by assessing the market value of the properties and on the basis of said settlement, the civil Court decrees were passed. It was further pleaded that the plaintiff along with his brother Ashwani Kumar had already sold the agriculture land which fell to their share. He further pleaded that he being exclusive owner in possession of the land in dispute sold the same to defendant no.1 for a valuable consideration. The plaintiff also sold the land which fell to his share vide judgment and decree dated 04.02.1987. It was further pleaded that plaintiff was very much in the knowledge of the impugned sale deed 13.10.1971.

7. Both the defendants also raised certain legal and preliminary objections and pleaded for dismissal of the suit.

8. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 19.07.2008:-

1. Whether the sale deed dated 13.10.1971 is null and void, ineffective and not binding on the rights of the plaintiff, on the grounds as alleged in the plaint?OPP
2. In case issue no. 1 is proved in affirmative, then whether the plaintiff is entitled to the relief of permanent injunction, as alleged?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether plaintiff has not come to the Court with clean hands?

OPD

5. Whether the suit is time barred?OPD

6. Whether the suit is bad for mis-joinder of necessary parties?

OPD

7. Relief.

9. The learned trial Court decided all the issues against the plaintiff and consequently his suit was dismissed with costs. Plaintiff preferred the appeal against the impugned judgment and decree dated 21.09.2012, but the appeal filed by the plaintiff-appellant was also dismissed by the learned Additional District Judge, Panitpat vide impugned judgment and decree dated 19.07.2013. Hence this Regular Second Appeal.

10. I have heard Mr. Abhinav Sood, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

11. Initiating the arguments, learned counsel for the appellant contended that Uttam Chand, the father of plaintiff and defendant no.2 was the owner of the suit property. He had executed the Will dated 12.05.1967 in favour of his all the four sons and divided his property in equal shares to all of them. He has also contended that the plaintiff, defendant no.2, their father Uttam Chand and other brothers constituted a joint Hindu family. Defendant no.1 Ajit Singh was an attesting witness of the said Will and he was fully aware and conversant with the contents of the Will. He has admitted the Will in the cross-examination. All these facts have been ignored by the learned Courts below.

12. He further contended that the plaintiff was a child of only 7 years of age at the time of death of his father. Defendant no.2, who as his

elder brother had tortured him during his childhood. He had no knowledge about the impugned sale deed dated 13.10.1971. He contended that defendant no. 2 had no right to alienate the suit land in favour of defendant no.1. The sale deed executed by him is null and void as he had executed the sale deed beyond his share. He was also not competent to alienate the specific Killa numbers without getting the joint land partitioned. Defendant no. 2 also had no legal necessity to alienate the land in dispute. He further contended that the suit filed by the plaintiff was also not barred by limitation as the plaintiff was a child of only 7 years of age at the time of the death of his father and 9 years of the age at the time of execution of the impugned sale deed. So, he cannot be presumed to be in the knowledge of the said sale deed. He only came to know about the sale deed in the year 2004 from one Sultan Singh. Thus, he contended that the judgments and decrees passed by the learned Court's below are liable to be set aside and suit filed by the plaintiff deserves to be decreed.

13. I have duly considered the aforesaid contentions.

14. This Regular Second Appeal has been preferred against the concurrent findings of facts recorded by both the learned Courts below. The law is well settled that the scope of interference with the concurrent findings of fact while exercising the powers under Section 100 of the Code of Civil Procedure, 1908 is very limited. It is only permissible where the Courts below misdirected themselves in appreciating the question of law, the onus was placed on the wrong party, the material or relevant evidence was not considered, which if, considered would have

led to an opposite conclusion and that the findings have been arrived at by the learned Courts below by placing reliance on inadmissible evidence, which, if, omitted would have led to the opposite conclusion and finally that the judgments passed by the Courts below are perverse. It is also the settled principle of law that in Regular Second Appeal, the High Court cannot indulge in the task of re-appreciating the evidence. In view of the aforesaid principles of law, we have to examine the case in hand.

15. In the instant case, the plaintiff-appellant had challenged the sale deed executed on 11.10.1971 and registered on 13.10.1971 copy Ex.P-2 executed by defendant no. 2 in favour of defendant no.1 on the grounds that defendant no.2 had no legal necessity to alienate the suit property, he had alienated more than his share and he was not competent to alienate the specific killa numbers. The suit has been filed by the plaintiff on 22.07.2005 i.e. after about 34 years of the execution and registration of the sale deed. The limitation to challenge the sale deed was three years. The plaintiff has pleaded that he was a minor at the time of execution of the sale deed and was only 9 years of age at that time. He was born in the year 1962. Definitely, the plaintiff was under the legal disability at the time of execution and registration of the impugned sale deed. The limitation to challenge the sale deed had expired when he was still under legal disability. But, he attained majority in the year 1980. So, he could have filed the suit within three years of attaining the majority as provided under Section 6 of the Limitation Act, 1963. Section 8 of the Limitation Act also provides that the period of limitation cannot be

extended for more than three years from the cessation of disability.

16. The plea raised by the plaintiff that he was not having the knowledge of the sale deed dated 13.10.1971 and came to know about the sale deed only in the year 2004 from one Sultan Singh is not substantiated. Said Sultan Singh has not been examined by the plaintiff to prove the fact that he had disclosed about the impugned sale deed to the plaintiff. Even otherwise, there has been long standing litigation between the parties, which has been narrated in the written statement filed by defendant no.2 and the documents with respect to the previous litigation have also been brought on record in evidence by the defendants. The plaintiff, defendant no.2 and their two brothers namely Chander Parkash and Ashwani Kumar had mutually settled the dispute with respect to their agriculture land in the year 1987. On the basis of which three decrees were passed. Learned First Appellate Court has categorically mentioned that the disputed killa number comprising rectangle no. 7 killa no. 29 was also the subject matter of the aforesaid litigation. When, all the four brothers have amicably resolved the dispute with respect to their shares in the agriculture land, so, the appellant must had come to know about the land transferred by defendant no.2 in favour of defendant no.1 at the time of passing the aforesaid decree dated 04.02.1987. On the basis of the decree dated 04.02.1987, the plaintiff has also alienated the agriculture land which had fallen to his share. So, the plea raised by the plaintiff that he had no knowledge about the sale deed dated 13.10.1971 prior to the year 2004 has no legs to stand. Thus, the suit filed by the plaintiff is hopelessly time barred.

17. Plaintiff has based his claim on the basis of the Will dated 12.05.1967. But, the said Will has also not been proved. The plaintiff has not placed on record the original Will or the certified copy thereof. He has also not examined any attesting witness of the Will. Learned counsel for the appellant has contended that defendant no.1 Ajit Singh was the attesting witness of the Will and he has admitted the Will in his cross-examination. But, this admission cannot establish the execution of the Will as the plaintiff has not placed on file either the original Will or the certified copy thereof by obtaining the same from the office of the Sub-Registrar.

18. Moreover, the Will dated 12.05.1967, allegedly executed by Uttam Chand, the father of plaintiff will not advance the case of the plaintiff. It is settled principle of law that the testamentary disposition of the property by way of Will takes effect from the date of the death of the testator. If, the property has already been transferred by him prior to his death, that can never be the subject matter of the Will. In the instant case, deceased Uttam Chand was not competent to bequeath the property in dispute by way of Will as he has already transferred the suit property during his lifetime by suffering the decree in favour of defendant no.2. Therefore, he cannot execute the Will regarding the disputed property, which already stood transferred in favour of defendant no.2 at the time of execution of the Will.

19. The land in dispute was standing in the name of defendant no.2. So, the same is not proved to be the joint Hindu family and coparcenary property of the plaintiff. Thus, plaintiff cannot assail the

impugned sale deed dated 13.10.1971 on the ground that the same was without any legal necessity. The plea raised by the appellant-plaintiff that defendant no.2 was not competent to alienate the specific killa number will also not invalidate the sale deed, as it is settled principle of law that the sale of the specific portion out of the joint Khewat by a co-sharer shall be deemed to be the sale of share subject to adjustment amongst the co-sharer at the time of partition. But, that cannot be a ground to set aside or declare the sale deed illegal.

20. The plaintiff has also not adduced any cogent and convincing evidence that defendant no.2 has alienated the land more than his share as he has not produced the relevant revenue record to show the share of defendant no.2 and other co-sharers. He has simply produced in evidence the copy of jamabandi mark 'X', which is only a marked document, which cannot be read into evidence.

21. Learned First Appellate Court has rightly observed that the plaintiff has admitted in the cross-examination that he has not been in possession of any part of the suit land and defendant no.1 is in possession thereof, which has been purchased by him vide impugned sale deed 13.10.1971. But, the plaintiff has not sought any relief for possession and his suit simplicitor for declaration without seeking the relief of possession is not maintainable. Thus, keeping in view of my aforesaid discussion, I do not find any perversity in the concurrent findings arrived at by the learned Courts below.

22. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

23. Consequently, the present appeal having no merits is hereby dismissed in *limine* with no orders as to costs.

January 15, 2016
s.khan

(DARSHAN SINGH)
JUDGE