

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2405 of 2016
Date of decision : May 18, 2016

Jasminder Bawa

..... Appellant

Versus

Mrs. Harvinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Puneet Bali, Senior Advocate with
Mr. Vibhav Jain, Advocate and
Mr. Paramveer Singh, Advocate
for the appellant.

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

Amit Rawal, J (oral).

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit seeking declaration to the effect that the plaintiff is absolute owner of House No. 225, Sector 6, Panchkula and the transfer dated 13.2.1980 without taking permission of Guardian Court, being illegal, null, void and void ab initio and consequential relief of permanent injunction seeking restraint against defendant Nos. 1 and 2 from forcibly and illegally dispossessing him from the entire house in question and as well as sought partition of other properties movable and immovable purchased by defendant Nos. 1 and 2 from the sale proceeds of H.No.224, Sector 6, Panchkula, land, building school in Zirakpur and other showrooms and booths has been dismissed.

Mr. Puneet Bali, learned Senior counsel assisted by

Mr. Vibhav Jain and Paramveer Singh, Advocate appearing on behalf of the appellant in support of grounds of appeal has raised multi fold arguments which are enumerated hereinbelow:-

(i) He submits that the Courts below have erroneously invoked the provisions of Article 60 of the Limitation Act, 1963 whereas Article 59 and Section 17 of the Limitation Act, 1963 would apply. Even the provisions of Section 8 of Hindu Minority and Gurardianship Act, 1956 (hereinafter called as 'the 1956 Act;') has also not been adhered to as the guardian is not permitted to alienate/transfer by sale, gift, exchange, mortgage any part of the property of the minor. There is categoric pleading in the plaint that the knowledge of the alleged transfer was acquired in the year 2010 and accordingly the suit was filed. In support of his contentions he has relied upon the judgments in **Venkatesh M. Karekar Vs. Rosemary Fernandes 2015 SCC Online Bom 6642** and **Utha Moidu Haji Vs. Kuningarath Kunhabdulla and others (2007) 14 SCC 792.**

(ii) He further submits that prior to the purchasing of the plot in question which was allotted in the name of the plaintiff on 6.1.1980 the permission under the 1956 Act was sought for selling the property situated in Mohali but while getting the property transferred in her (defendant's) name, who is none else but mother such permission had not been taken. Plaintiff occupied the first floor of the residential house only after closure of the School which was being run in the premises, thus, acquired the knowledge of the alleged transfer.

(iii) He further submits that the lower appellate court exceeded the jurisdiction in recording the finding that the trial court had held that the transfer in the name of the defendant was bad in law, but declined interference on account of limitation, thus urges this Court to formulate substantial questions of law as drawn in the Memorandum of Appeal.

I have heard learned counsel for the appellant and appraised the paper book.

It would be apt to reproduce Article 59 and 60 much less Section 17 of the Act.

59.	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.
60.	To set aside a transfer of property made by the guardian of a ward		
(a)	By the ward who has attained majority;	Three years	When the ward attains majority.
(b)	By the ward’s legal representative	Three years	
	(i) When the ward dies within three years from the date of attaining majority;		When the ward attains majority.
	(ii) When the ward dies before attaining majority	Three years	When the ward dies.

Section 17

Effect of fraud or mistake.—

- (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—*
- (a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
- (b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any*

such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said

period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

The limitation to cancel such documents is three years when the plaintiffs acquires the knowledge of the aforementioned and as per Article 60, minor/ward can challenge the transfer of the property made by the guardian within three years from the date of attaining majority. The conceded position on record is that in the year 1980 the appellant-plaintiff was 13 years old and attained majority in the year 1985 and the suit was filed in the year 2010 i.e. after 25 years of attaining majority. The word “instrument” has been described in Section 3 of the Transfer of Property Act, 1982 which means a non-testamentary instrument. On going through the contents of the plaint, admittedly there is no challenge to the conveyance of the aforementioned property i.e. in regard to the House No. 225, Sector 6, Panchkula which was effected in the year 1999. The challenge is only confined to transfer. The transfer would not fall within the expression “instrument”, rightly so the legislature in its wisdom prescribed the limitation for challenging the instrument. Had the both expressions been one, both the Article 59 and 60 would have reflected the word “instrument” or “transfer”. In both the judgments referred Venkatesh M. Karekar and Utha Moidu Haji (supra) the challenge was to the registered sale deed and not to the transfer. The sale deed would fall within the expression “instrument”

but not “transfer” and the limitation to challenge the transfer as per Article 60 of the Act is three years from the date of attaining majority.

It is conceded position on record that the property stand in the name of defendant No.1, who is none else but mother of the plaintiff and during the pendency of the case vide Ex. PW9-/6 an attempt to transfer was made as defendant No.1 had entered into an agreement to sell and there was an interim stay and contempt petition was also filed which was also dismissed by this Court vide order dated 29.4.2016 passed in **COCP No. 1745 of 2011** titled as **Jasminder Bawa Vs. Mrs. Harvinder Kaur Bawa and others.**

There would have been some substance in the submission of Mr. Bali, much less it would helped the plaintiff to prove that the suit to be within limitation, had there been a challenge to the conveyance deed, “instrument” in the year 1999, perhaps the suit would have fallen within purview of Article 59 of the Act.

As regards the applicability of Section 17 of the Act, on plan and simple reading of the provisions extracted above, it prescribes that where any document necessary to establish the right of the plaintiff or applicant has fraudulently been concealed from him, the period of limitation shall not begin to run until plaintiff or applicant discovers the fraud. An attempt has been made that the alleged transfer of 1980 was a fraud being played upon the plaintiff and therefore being void, “instrument” or “transfer” the suit could not have been thrown out being barred by law of limitation.

I am of the view that there was no sale deed or creation of third party right enabling the plaintiff to prove his case

within the parameters of fraud. Even the HUDA authorities did not raise objections with regard to the transfer as Section 8 of 1956 Act deals with the sale deed, alienation and accordingly transferred the plot in favour of defendant No.1. No doubt, the trial court gave finding that the aforementioned act was not within the domain of defendant No.1 but non-suited the plaintiff on the ground of limitation, which has been reiterated by the lower appellate court. The lower appellate court in my view, drawn wrong inference that the trial court rendered finding against the plaintiff, accordingly, the finding qua that effect is rendered obiter. On cumulative reading of the aforementioned facts, it leads to irresistible conclusion that the limitation to file the suit would be governed by the provisions of Article 60 of the Act and as the suit has been filed after 25 years of attaining majority, rightly so, being barred by law of limitation.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

May 18 , 2016
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