

RSA No. 2689 of 2016(O&M)

1

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2689 of 2016(O&M)

Date of decision : May 28, 2016

Jit Singh and others

..... Appellants

Versus

Sukhdev Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Navjot Singh Wahniwal, Advocate
for the appellants.**

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 rendered by both the courts below whereby ex-parte suit seeking declaration that they are in possession of the land measuring 9 Kanals 4 Marlas bearing Khasra No. 12//12 (8-0), 13/1 (1-4) situated in the revenue estate of village Kishan garh Tehsil Nihal Singh Wala District Moga and defendant No.1 and 2 Sukhdev Singh and Sakattar Singh have no title or interest in the suit property and also for declaration that judgment and decree dated 20.11.1995 passed in Civil Suit No. RT 1026 of 31.10.1991 and also for setting aside of the sale deed dated 26.6.1990 and also subsequent sale deed dated 24.7.1998 registered on 29.7.1998 and mutation No.3978 dated 22.8.1998 with a alternative plea of possession of land has

been dismissed by both the courts below. The case set up by the appellant-plaintiff No.1 that he and defendant No.3 was owner of the suit property along with Parsin Kaur, who has already expired, and the estate of Parsin Kaur has been inherited by plaintiffs. Plaintiff No.1, Parsin Kaur and defendant No.3 never agreed to sell the suit property to defendant Nos. 1 and 2 and obtained signatures of plaintiff No.1 and Parsin Kaur by playing fraud upon them and un-registered sale deed dated 26.6.1990 is also not bearing signatures of defendant No.3. On the basis of aforementioned documents, defendant No.1 and 2 filed the suit for specific performance which was allegedly on 11.1.1995 compromised and defendant No.1 and 2 after having obtained the consideration moved an application dated 11.1.1995 through their attorney Bakhtaur Singh for recording the compromise. Plaintiff No.1 was told that since the application has already been moved, the suit would be automatically dismissed, therefore plaintiff did not appear, ultimately the suit was decreed vide judgment and decree dated 25.11.1995 and the sale deed has also been executed as noticed above, much less mutation, thus, cause of action arose to file the suit arose only two months ago when the defendant Nos. 1 and 2 took forcible possession of the land and instituted a suit in the year 2006, therefore, the suit cannot be said to be barred by law of limitation. Even in the present suit the defendants did not appear and were proceeded ex-parte. Certified copy of the jamabandi, in this regard has been proved on record to show the possession and ownership, therefore the mutation aforementioned and the sale deeds are null and void and have no force in law, rather, fraud has been played upon the appellant-plaintiff and for challenging the same there is no limitation.

He further submits that in ex-parte evidence, PW-1 has been examined, thus urges this Court to set aside the judgments and decrees of both the courts below and formulate substantial questions of law as carved out in the Grounds of Appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that the appellants-plaintiffs have miserably failed to prove the case as set out in the plaint except a self serving statement, no documentary evidence, or corroborative evidence has been tendered. It is now a settled law that mere exhibition of the document would not dispense with its proof.

In my view the appellants-plaintiffs have very cleverly brought the suit within the period of limitation by filing the suit in the year 2006 by rasing alleged cause of action to file the suit arose only two months ago when the defendant Nos. 1 and 2 took forcible possession of the land. The judgment and decree in Civil Suit No. RT 1026 of 31.10.1991 is of the year 1995. The sale deed and mutation are of the year 1998. No one can sit idle despite having registered sale deed in his favour. The claim in the plaint seeking possession, thus belies jamabandi which has not been proved in accordance with law. The plaintiffs have miserably failed to prove their possession. It is a matter of record that the matter between the parties had been compromised. Article 59 of the Limitation Act, 1963 prescribe the period of limitation to challenge or set aside an instrument or decree or for the rescission of a contract within a period of three years from the date when it first becomes known. The possession of the sale deeds would not bring the suit within the period of limitation. The question of limitation as per provisions of Section 3 of the Limitation Act, 1963 can be taken up at any

stage of the suit or appeal.

In view of the aforementioned facts, the suit was 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.

There is a delay of 322 days in filing the appeal on the ground that by mistake the unsigned power of attorney was filed and on realizing the mistake the appeal was again filed and in this process delay of 322 days has occurred.

No ground is made out for condoning the delay. The application for condonation of delay is also dismissed.

(AMIT RAWAL)
JUDGE

May 28 , 2016
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