

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

C.M. NO.5321 C OF 2015 &

R.S.A. NO.2027 OF 2015

DATE OF DECISION: FEBRUARY 11, 2016

Hardev Singh and another

.....Appellants

VERSUS

Malkiat Singh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. G. S. Nagra, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 15.10.2013 passed by the Civil Judge (Junior Division), Amritsar, whereby suit for declaration to the effect that the appellant-plaintiffs are owners in possession of the land mentioned in jamabandi to the extent of 9/95 share shown in column No.5 in favour of respondent-defendants is illegal and is liable to be corrected and deleted in Khasra No.63 (4-15), as entered in jamabandi for the year 2007-08, Hadbast No.372, Khata Khatoni No.493/820, situated at Village Tung Pai, Tehsil and District Amritsar and the power of attorney dated 01.08.1994 allegedly executed by Sawaran Singh, father of the appellant-plaintiffs in favour of father of the respondent-defendants, Gian Singh, is illegal, null, void and inoperative qua

the rights of the appellant-plaintiffs and is a result of fraud, fabrication, impersonation and liable to be set-aside with a suit for permanent injunction restraining the respondent-defendants from dispossessing the appellant-plaintiffs from the suit land and from alienating the land in any manner, has been dismissed being barred by limitation, appeal against which, preferred by the appellant-plaintiffs, stands dismissed by the Additional District Judge, Amritsar, on 07.11.2014.

It is the contention of learned counsel for the appellants that the findings, as recorded by the Courts below on the question of suit having been barred by limitation, are not sustainable as the trial Court has given a finding that the power of attorney dated 01.08.1994 is a result of fraud and impersonation. He contends that since the basic document, on the basis of which further steps have been taken by the respondent-defendants claiming themselves to be the owners of the land as co-sharers, stands dislodged on the ground of fraud having played, as has been mentioned in the findings by the trial Court, there can be no limitation. He further states that no objection has been raised by the respondent-defendants with regard to the suit being barred by limitation. He, thus, contends that the judgments and decree passed by the courts below cannot sustain and deserve to be set-aside.

I have heard learned counsel for the appellants and with his able assistance have gone through the impugned judgments but do not find any merit in the contentions as raised by him.

The first plea, which has been taken by learned counsel for the appellants, is that the suit is not barred by limitation as the power of attorney and the subsequent entries in the revenue record are the result of a

fraud and impersonation, for which there is no limitation, which cannot be accepted as it is specifically provided under Article 56 of the Limitation Act, 1963 (for short, “the Act”), that a suit for declaration to declare the forgery of an instrument issued or registered is three years from the date of issue or registration becomes known to the plaintiffs. Similarly, under Article 59 of the Act, period of three years has been prescribed for filing a suit to get cancellation or setting-aside an instrument or a decree or a rescission of a contract, when the facts, entitling the plaintiffs to have the instrument or decree cancelled or set-aside from the contract rescinded first become known to him.

The question, therefore, would be to determine the date on which the appellant-plaintiffs came to know about the existence of the document i.e. general power of attorney dated 01.08.1994, which is in favour of Gian Singh, father of respondent-defendants, as executed by Sawaran Singh, father of the appellant-plaintiffs. As it has come on record, suit bearing No.244 dated 14.02.2004 was filed by Gian Singh against Sawaran Singh, father of the appellant-plaintiffs, where it was asserted that there was a general power of attorney dated 01.08.1994, on the basis of which the sale deed dated 26.12.2003 was executed by Sawaran Singh in favour of the respondent-defendants. Although it has been asserted that a counter claim was filed in the said civil suit but it was only limited to the extent that they were entitled to hold Plot Nos.56 and 57 comprising part and parcel of Khasra No.65 as per jamabandi for the year 1997-98, Khata Khatoni No.435/732, situated in Village Tung Pai for the purpose of injunction only. The plea with regard to the alleged general power of attorney and the sale deed to be set-aside on the ground of fraud was not

assailed. The period, therefore, which has to be counted is from 14.02.2004, the date on which the suit for permanent injunction against Sarawan Singh, father of the appellant-plaintiffs, was filed by Gian Singh or at the most when notice in the suit was served upon him. The Courts have, therefore, rightly proceeded to hold that the suit is barred by limitation as it has been filed on 14.12.2011.

Counsel for the appellant has referred to the compromise dated 15.09.2003 (Ex.P5), which has been entered into between the parties, which is alleged to have taken place between Gian Singh and Sawaran Singh. The said compromise again is dated 15.09.2003, which would not be of any help as far as the claim of the appellant-plaintiffs is concerned for bringing it within the ambit of limitation period of three years as prescribed under the statute. The findings, as have been recorded by the Courts below and the dismissal of the suit of the appellant-plaintiffs on the ground of it being barred by limitation, cannot be faulted with.

The plea of the counsel for the appellant that no objection has been raised by the respondent-defendants with regard to the period of limitation in the reply, which has been filed, cannot be accepted as the limitation is between the Court and the plaintiff(s), which has to be, at the very outset, considered and decided by the Court. In the present case, the Courts have rightly proceeded to take the same into consideration and decided against the appellant-plaintiffs.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.5321-C of 2015 for grant of ad-interim injunction restraining the respondent-defendants from interfering in peaceful and continuous possession of the appellant-plaintiffs as well as alienating the suit land is also dismissed.

February 11, 2016
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(AUGUSTINE GEORGE MASIH)
JUDGE