

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

**Regular Second Appeal No.3912 of 2015 (O&M)
Date of Decision: January 14, 2016.**

Kanwal Kaur and others

.....APPELLANT(s).

VERSUS

Surjit Kaur and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Damanbir Singh Sobti, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Appellants-plaintiffs filed suit seeking declaration that the sale deed bearing vasika No.13450 dated 20.06.1994 purported to be executed on behalf of Balbir Kaur wife of Khem Chand,-appellant No.5, is forged and fabricated document not executed by Balbir Kaur. They also sought declaration that the sale deed dated 09.01.1974 registered on 14.01.1974 bearing vasika No.9016 regarding the suit property in favour of Balbir Kaur was a *benami* transaction as the suit property was purchased by plaintiff No.5 by spending money from his own pocket.

2. The defendants contested the claim of the plaintiffs alleging the sale deed dated 20.06.1994 as validly executed document by Balbir Kaur being exclusive owner of the suit property vide sale deed dated 09.01.1974 registered on 14.01.1974. Plaintiffs No.1 to 4 and defendants No.1 and 2 are the daughters of Balbir Kaur while plaintiff No.5 is her husband. Though the plaintiffs have levelled several allegations against husband of Surjit Kaur but

the same are not relevant to decide the matter in controversy in this case, as such, not being discussed.

3. Challenge to the sale deed executed by Balbir Kaur in favour of her daughter defendant No.1 was on two grounds; firstly, that Balbir Kaur was not in fit state of mind on the date of execution of the sale deed. She was bed-ridden and died after one month and 9 days of execution of the sale deed. Both the Courts discarded this plea of the plaintiffs for want of any medical evidence to prove that Balbir Kaur was not mentally sound or was not in a fit state of health at the time of execution of sale deed.

4. Second plea of the plaintiffs that the suit property was purchased by plaintiff No.5 in the name of Balbir Kaur by spending money from his pocket was discarded in the absence of any evidence that the sale consideration was paid by plaintiff No.5. Both the Courts below observed that the suit filed by the plaintiffs on 02.08.2002 challenging sale deed dated 20.06.1994 is barred by limitation. Even, plaintiff No.5 while appearing as PW5 and plaintiff Bhupinder Kaur while appearing as PW3 have admitted that they came to know of the sale deed after three years of its execution i.e. in the year 1997 and even from that date, the suit filed on 02.08.2002, was barred by limitation.

5. Learned counsel for the appellants has argued that Surjit Kaur along with her husband, Dilawar Singh who was a '*Ghar Jamai*', was living with her mother Balbir Kaur and plaintiff No.5 Khem Chand. It was at the instance of Dilawar Singh that sale deed of the suit property was got executed in favour of defendant No.1, thereby depriving other five sisters of defendant No.1 and Khem Chand of their rights in the suit property. Khem Chand was also turned out of the disputed house.

6. Learned Civil Judge (Junior Division) Ludhiana while discussing the evidence produced by the plaintiff has concluded that defendant No.1 and her husband are in possession of the suit property and are residing there. They are also running their business of '*Chhole-Bhature*' in that premises since the date of its purchase. Bhupinder Kaur plaintiff while appearing as PW3 has admitted that Dilawar Singh had been working in the shop situated in suit property since 1980. Khem Singh, plaintiff No.5 has dual ration card, one of Ludhiana and another (Ex.PX) with a lady named Sharanjit Kaur at the address of Moga. No documentary evidence was produced that it was Khem Chand who was running his business of selling '*Chhole Bhature*' in the shop situated in the suit property.

7. Learned counsel for the appellants during the course of arguments, could not assail the findings of the Courts below or point out that these are not based on the facts and evidence produced on record.

8. He has argued that plaintiffs produced affidavit of PW6 Paramjit Singh and PW7 Ram Singh in rebuttal evidence but they were deprived to appear as witness by the Civil Judge (Junior Division) vide order dated 19.07.2011 on the ground that there is no issue of rebuttal and the affidavits of above witnesses were not taken on record.

9. On careful consideration of the above submission of learned counsel for the appellants, I find that the appellants have produced the aforesaid two witnesses to prove their case on merits and not in rebuttal to the evidence of defendants. There was no issue in rebuttal on which testimony of these two witnesses could be recorded, as such, the Court has rightly declined permission to the plaintiff to examine these witnesses in rebuttal.

10. On perusal of the paper book and judgments of the Courts below, I find no legal or factual infirmity in the findings recorded by the Courts below. During the course of lengthy arguments, learned counsel for the appellants has not been able to point out any evidence which corroborate and prove the plea taken by the appellants-plaintiffs challenging the sale deed executed by Balbir Kaur or that the sale deed 09.01.1974 registered on 14.01.1974 bearing vasika No.9016 was a *benami* transaction.

11. On the perusal of the testimonies of the witnesses examined by the plaintiffs, it is clear that Balbir Kaur was having six daughters and all were married. She was living with her daughter Surjit Kaur, defendant No.1 and her husband Dilawar Singh. Both were living with Balbir Kaur in the disputed property and before her death, she transferred the suit property to Surjit Kaur vide sale deed dated 20.06.1994. Balbir Kaur was exclusive owner of the suit property and the plaintiffs though they are daughters and husband of Balbir Kaur lack any locus standi to challenge the act of Balbir Kaur selling her property to her daughter particularly when they have failed to prove and substantiate their plea of fraud and misrepresentation leading to the execution of the sale deed dated 20.06.1994.

12. No substantial question of law requiring determination arises in this appeal, which has no merits.

13. Dismissed.

January 14, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE