

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.4655 of 2014 (O&M)

Date of Decision: February 25, 2016.

Sadhu Singh

.....APPELLANT(s).

VERSUS

Gurpinder Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Iqbal Singh Bajwa, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Appellant-plaintiff claim that he had 1/2 share in the suit property, which is a house situated in the *abadi* of Mohalla Chaudharian, P.O. Phillaur, Tehsil Phillaur, District Jalandhar on the basis of Will dated 28.12.1964 executed by his father Bhola Singh in his favour, was discarded by both the Courts below on two grounds; firstly, that the Will was not produced or proved on record; and secondly, Bhola Singh, who admittedly was owner of the house in dispute, had sold the same to defendant No.1 Harbhajan Singh on 08.05.1973.

2. Learned counsel for the appellant has argued that the original sale deed was not produced and proved on record. Only Harbhajan Singh had appeared to state that the sale deed was executed by Bhola Singh in his favour. No other marginal witness was examined.

3. The Courts below have relied on the certified copy of the sale deed while discarding the plea of plaintiff that the sale deed was not result of

free will of Bhola Singh.

4. The onus in this case was on the plaintiff to prove that the sale deed dated 08.05.1973 was not executed by Bhola Singh of his free Will. The plea taken by the appellant-plaintiff impliedly admits the existence of sale deed which the defendant No.1 was not required to prove. The onus was on the plaintiff to prove his plea, while leading evidence in affirmative. The sale deed is a quite old document, which was executed in the year 1973. Bhola Singh, as per own case of plaintiff, died in the year 1975. This suit was filed in the year 2005 i.e. after a period of 32 years of execution of the sale deed. The plea of the plaintiff that he was living abroad, as such, could not challenge the sale deed earlier, is not tenable as the suit property is a house where defendant No.1 is residing and right to claim his share by way of natural succession or on the basis of Will, had accrued to the appellant in the year 1975 after the death of his father. No doubt, the late filing of the suit, in no manner, bars the right of plaintiff-appellant but when he is coming up with a plea that sale deed is not a valid document, onus was on the plaintiff to prove it, which he utterly failed to prove by leading cogent and convincing evidence.

5. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

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

7. Dismissed.

(SURINDER GUPTA)
JUDGE

February 25, 2016.

Sachin M.