

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2689 of 2017
Date of decision: 19.04.2017

Baljit and others

... Petitioners

Vs.

Ompati and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ajay Kumar Kansal, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present revision petition, at the hands of the defendants, filed under Article 227 of the Constitution of India, is directed against the order dated 03.02.2017 (Annexure P-3) passed by the learned trial Court, dismissing the application under Order 7 Rule 11 of the Code of Civil Procedure filed by the defendants-petitioners.

Heard learned counsel for the petitioners.

A bare perusal of the impugned order would show that it was a suit for declaration, whereby plaintiffs-respondents herein, who are widow, sons and daughters of late Sh. Ram Kumar son of Sh. Rangi, were challenging different sale deeds suffered by late Sh. Ram Kumar in favour of defendants No.1 and 2 and further sale deeds by defendant No.1 in favour of defendant No.3 and thereafter, by defendant No.3 in favour of defendant No.4, being illegal, null

and void, based on fraud and misrepresentation.

The basic, material and undisputed fact is that none of the plaintiffs are party to any of the impugned sale deeds in the suit. The learned trial Court rightly recorded that since the question of limitation was a mixed question of law and fact, the suit cannot be dismissed as barred by limitation, unless the parties are permitted to lead their evidence to prove their pleaded case. It is also pertinent to note here that since the petitioners-defendants are asserting that suit filed by the plaintiffs-respondents was barred by limitation, onus would be on the defendants to prove this fact. Since none of the parties have led any evidence so far, the suit could not have been dismissed as time barred.

Similarly, once the plaintiffs were not executant of the impugned sale deeds and they are not claiming the consequential relief of possession, they were not liable to pay ad valorem Court fee, in view of the law laid down by the Hon'ble Supreme Court as well as this Court. It was so held by the learned trial Court, while passing the impugned order. Having said that, this Court feels no hesitation to conclude that the learned trial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court and different High Courts, including this Court: -

- 1. *Popat and Kotecha Property Vs. State Bank of India Staff Association, 2005 (7) SCC 510 (SC).***
- 2. *Prem Singh and others Vs. Birbal and others, 2006 (5) SCC 353 (SC).***

3. ***Hardesh Ores Pvt. Ltd. Vs. M/s Hede and Company, 2007 (5) SCC 614 (SC).***
4. ***Kamlesh Babu and others Vs. Lajpat Rai Sharma and others, 2008 (12) SCC 577 (SC).***
5. ***Surjit Kaur Gill and another Vs. Adarsh Kaur Gill and another, 2014 (16) SCC 125 (SC).***
6. ***Sukhen Sarkar Vs. Rakhal Chandra Sarkar, 2011 (43) RCR (Civil) 200 (Gauhati High Court).***
7. ***Bharpoor Singh and another Vs. Lachhman Singh, decided on 17.01.2017 in CR No.226 of 2017 (P&H).***

Before arriving at its judicious conclusion, the learned trial Court rightly examined, considered and appreciated true facts of the case as well as the settled proposition of law applicable thereto, in the correct perspective. The relevant observations made by the learned trial Court in paras 7 to 10 of its impugned order, which deserve to be noticed here, read as under: -

“It is settled law that to decide an application filed under order 7 Rule 11 CPC, the court only has to look at the plaint of the plaintiff for deciding the question that whether the plaint is liable to be rejected under order 7 Rule 11 CPC or not. The court cannot look into the averments made by the other party in the written statement or in the application filed under Order 7 Rule 11 CPC. From the bare perusal of plaint, at this stage, it seems that they came to know about the alleged fraud only about six months prior to the filing of the present suit and thus, at this stage, it cannot be said

that plaint of the plaintiffs is liable to be rejected on the ground of being barred by limitation.

Further, question of limitation is a mixed question of law and fact and evidence has to be taken on record from both the parties to see whether a suit is barred by limitation or not.

Furthermore, in Suhrid Singh @ Sardool Singh Vs. Randhir Singh 2010 AIR SC 2807, the Hon'ble Supreme Court has held that if plaintiff is not executant of a sale deed then he is not required to pay the advolerm court fee. In the present case also, plaintiffs are not executant of the alleged sale deeds challenged by them by way of present suit and thus, plaintiffs are not liable to pay advolerm court fee on the sale consideration of the challenged sale deeds.

Thirdly, to this court, prima facie, the present case does not seem to be a case of mis-joinder of causes of action. The sale deeds which have been challenged by the plaintiffs have been executed by Ram Kumar in favour of defendants no one and two and one sale deed has been executed by defendant No.1 in favour of defendant No.3 which forms a chain of transaction and thus, they cannot be said to be mis joinder of causes of action.”

Coming to the judgments relied upon by learned counsel for the petitioners in **Shamsher Singh Vs. Rajinder Prashad, 1973 LawSuit (SC) 225** and **Tarlochan Singh Vs. Tejpal Singh and others, 2015 LawSuit (P&H) 5548**, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has

been found of any help to the petitioners, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An

inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed,

considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of

an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT,

AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

During the course of hearing, when confronted with the abovesaid factual as well as legal aspect of the matter, learned counsel for the petitioners had no answer and rightly so, it being a matter of record. He also could not point out any patent illegality or perversity in the impugned order passed by the learned trial Court, which may warrant any interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order passed by the learned trial Court is well written order, which has been found duly supported by sound reasons as well as in consonance with the law laid down by the Hon'ble

Supreme Court and this Court, thus, the impugned order deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

19.04.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No