

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.6217 of 2016
Date of decision:3.3.2017**

Raj Kumar and others

...Appellants

Versus

Karan Singh @ Krishan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sudhir Aggarwal, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendants are in second appeal against against the impugned judgments and decrees passed by the learned courts below, whereby suit for recovery filed by the plaintiffs was decreed by both the learned courts below, recording concurrent findings of facts.

Shorn of unnecessary details, facts necessary for disposal of the present appeal, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that Sher Singh (deceased), father of the defendants No.1,3 to 5 and husband of defendant No.2 had sold his 16 kanals six and half marlas of agricultural land to the mother of the plaintiff Shano Devi alias Shanti Devi vide registered sale deeds dated 6.10.1994 and 24.1.1995 for consideration of Rs.1,59,250/- in each sale deed i.e. for total sale consideration of Rs.3,18,500/-. Sher Singh died on 11.1.1999. Shano Devi also died on 3.6.2008. Sher Singh had already transferred the land (which he sold to Shano Devi) to the defendants by suffering a secret and collusive decree in Suit No.473 of 1994 decided on 11.10.1994 in favour of the defendants meaning thereby that Sher Singh had no saleable rights or

interest in the land sold to Shano Devi. So Sher Singh, ancestor of defendants had received Rs.3,18,500/- from Shano Devi vendee intentionally with malafide intention by playing fraud upon Shano Devi. Sher Singh got a Suit No.93 of 1996 filed by the defendants against Shano Devi, her husband Kehar Singh and against himself on 13.11.1996 which was decreed on 14.1.1998. In the said suit Sher Singh also filed his written statement admitting the claim of the plaintiffs (now defendants). Shano Devi contested the said civil suit but could not succeed. Shano Devi and Kehar Singh filed an appeal challenging the judgment and decree passed by the learned trial court. The litigation continued up to the Hon'ble Supreme Court but Shano Devi and Kehar Singh remained unsuccessful right upto the Hon'ble Supreme Court where the matter was finally decided on 20.10.2008. The plaintiffs were class one heirs of Shano Devi and were legally entitled to file the present suit to recover the said sale consideration with interest, expenses and damages from the defendants who received all sorts of estate of Sher Singh deceased being class one heirs of the deceased and were legally liable to pay the said amount to the plaintiffs. Thus, the plaintiffs were entitled to recover Rs.9,00,000/- as refund of sale consideration, interest from the date of payment to 31.01.2009 as well as expenses as damages from the defendants by filing a suit for recovery.

Having been served in the suit filed by the plaintiffs, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiffs.

On completion of pleadings of parties, learned trial court framed the following issues.

1. Whether plaintiff is entitled to recover an amount of RS 9 lacs from the defendants?OPP
2. Whether plaintiff is entitled to claim interest, if so, at what rate?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether the plaintiff has no locus standi to file the present suit?OPD
6. Whether the suit is barred by u/o 2 Rule 2 CPC?OPD
7. Whether the suit is time barred?OPD
8. Whether the plaintiffs have not come with clean hands and concealed the true and material facts?OPD
9. Whether the suit is bad for mis-joinder and non- joinder of necessary parties?OPD.
10. Relief.

In order to prove their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have duly proved their case for recovery of Rs.9 lacs. Accordingly, the suit was decreed vide impugned judgment and decree dated 21.1.2014. Feeling aggrieved, defendants filed their first appeal, which came to be partly allowed by the

learned first appellate vide its impugned judgment and decree dated 30.5.2016. The judgment and decree of the learned trial court, decreeing the suit for recovery of Rs.9 lacs along with interest @ 12% per annum were set aside and it was held that the plaintiffs are entitled to recover an amount of Rs.3,18,500/- from the defendants along with interest @ 9% per annum. Hence this regular second appeal at the hands of the plaintiffs.

Learned counsel for the appellants raised two arguments. Firstly, he contended that the suit for recovery was time barred and the second argument was that the suit was also barred under Order 2 Rule 2 of the Code of Civil Procedure ('the CPC' for short). However, both these arguments raised by the learned counsel for the appellants have been found wholly misplaced and the same were not worth acceptance.

The reason to say so is that earlier the plaintiffs had been pursuing their right regarding title of the suit land. In that first round of litigation, plaintiffs lost their appeal before the Hon'ble Supreme Court on 20.10.2008. Thereafter plaintiffs filed their suit for recovery on 14.2.2009, which cannot be said to be barred by limitation by any stretch of imagination. Both the courts below have rightly held the suit within limitation and such findings of the learned courts below deserve to be upheld.

Similarly, the second contention raised by learned counsel for the appellants has been found devoid of any merit. The earlier litigation, as noticed hereinabove, was regarding title, whereas the present suit was for recovery, thus, causes of action in both these civil litigations were entirely different and independent of each other. Under these circumstances, it can be safely concluded that the present suit was not barred under Order 2

Rule 2 CPC. That is what has been held by the both the learned courts below. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Vimal Chand Ghevarchand Jain and others Vs. Ramakant Eknath Jajoo, 2009 (5) SCC 713** and Division Bench judgment of this Court in **Satwant Kaur Vs. State of Punjab, 1993 (2) PLR 298**.

Learned first appellate court re-considered and re-appreciated the facts and evidence available on record, before recording its own cogent findings. Relevant findings recorded by learned first appellate court in paras 10 and 11 of its impugned judgment, which deserve to be noticed here, read as under:-

“I have heard the learned counsel for the appellants and learned counsel for the respondents. From the evidence on record it is apparent that Sher Singh (father of the defendant no 1, 3 to 5 and husband of defendant no 2) sold the land to the mother of the plaintiffs Shano Devi vide registered sale deeds Ex.P1 and Ex.P2 dated 06.10.1994 and 24.01.1995 for a total sum of Rs.1,59,250/-. The defendants and Sher Singh suffered a decree dated 11.10.1994 in civil suit No. 473 instituted on 28.9.1994 (as transpires from para 18 of Ex. D4) whereby the rights in the said land were transferred from Sher Singh in favour of the defendants. The defendants filed civil suit No. 93 of 13.11.1996 challenging the said sale deeds and their suit was decreed on 24.1.2005 vide judgment Ex D-4 and

it was held in para no 19 and 20 of the said judgement that the said sale deeds do not create any right in favour of the vendee Shano Devi (mother of the plaintiffs). Litigation continued up to the Hon'ble Supreme Court where Shano Devi finally lost the legal battle on 20.10.2008. In the facts of the case it is apparent that a sum of Rs.3,18,500/- was obtained by Sher Singh when he had no saleable interest in the land. Further the land in respect of which Sher Singh had obtained the aforesaid amount of Rs.3,18,500/- from Shano Devi was transferred to the defendants and as the defendants acquired the said estate the contention of the learned counsel for the defendants that they cannot be held liable to refund the said amount obtained by Sher Singh will not come to their rescue. The contention of the learned counsel for the defendants that advancement of consideration of Rs.3,18,500/- is not proved as PW2 Balbir was a witness on only one of the sale deeds does not also help the defendants. The said sale deeds are registered and a presumption lies that the consideration as mentioned therein was paid to the seller i.e Sher Singh. There is no evidence on file to discard the said presumption.

The contention raised by the learned counsel for the defendants that the plaintiff's suit is barred by limitation will not help the defendants. The defendants had filed a suit against the plaintiff's mother for setting aside of sale deeds in her favour. The said suit was decreed but further appeal was filed and the litigation continued right upto the Hon'ble Supreme Court. Finally the SLP/Appeal filed by the plaintiff's mother, father was dismissed by the Hon'ble Supreme Court on 20.10.2008. Thus upto the said date the plaintiffs were protecting their title but when they finally lost the said legal battle regarding title they instituted present suit for recovery on 14.02.2009. Merely the fact that the plaintiffs are claiming interest since 1994/95 when the sale consideration were made

to Sher Singh will not meant that the limitation is to be ascertained from 1994/1995. Period of limitation can only be ascertained from 20.10.2008 when the plaintiffs finally lost the legal battle regarding title in the Hon'ble Supreme Court. The contention of the learned counsel for the defendant that the suit is barred by Order 2 Rule 2 CPC is also devoid of merit. The dispute in the said earlier litigation was regarding title. The plaintiffs were finally unsuccessful in the Hon'ble Supreme Court and subsequently they filed the present suit for recovery. The causes of action in the earlier litigation and the present suit are different and the suit cannot be held to be barred under Order 2 Rule 2 CPC."

During the course of hearing, learned counsel for the appellants could not point out any jurisdictional error or patent illegality in either of the impugned judgments and decrees passed by the learned courts below. He also could not point out any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. The entire case of the appellants was based on technicalities alone. Neither law nor equity has been found in favour of the appellants. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286.***

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the

considered view that the instant regular second appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

3.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
<i>Whether Reportable</i>	:	<i>Yes/No</i>