IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.81 of 1992 (O&M)
Date of Order: 16.05.2018

Chiranji Lal (since deceased) through his LRs. & Ors.

..Appellants

Versus

Ram Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Majithia, Sr. Advocate, with
Mr. Inderjeet Singh, Advocate,
for the appellants.

Mr. Babbar Bhan, Advocate, for
Mr. R.S.Chahar, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the judgment and decree passed by the learned first appellate court reversing the judgment and decree of the trial court.

In the considered opinion of this Court, following substantial questions of law needs determination:-

(i) Whether the suit filed for possession of the property which results in displacing bonafide purchasers for consideration, filed after a period of approximately 40 years, is within limitation?

(ii) Whether one of the co-owner (all brothers) can challenge the sale deeds executed by another co-owner on the ground that the sale made by one brother in a particular khewat was more than his share without claiming any relief against legal heirs of the co-owner who is alleged to have sold excess land?

Nand Ram had 3 sons, namely, Sheo Lal, Sheo Narain and Ramji Lal @ Ramjiwan. They were joint owners of the land in different khewats, i.e. 301(301 bighas and 15 biswas), 291, 303, 316 and 317.

Sheo Lal claims that Sheo Narain, his brother, sold 13 bighas and 17 biswas of land in excess of his share from khewat no.301. Ramji Lal @ Ramjiwan, the other co-sharer, does not have any dispute. All these sale deeds including sale by way of court auction took place between 1934 to 1945. Consolidation of Holdings in the village took place in the year 1967-68. After completion of the consolidation, plaintiff Sheo Lal is alleged to have filed an application under Section 42 of the East Punjab Holding (consolidation and Prevention of Fragmentation) Act, 1948 , which was not entertained on the ground that the question of title is involved and therefore authorities cannot go into the same. That is how the present suit was filed by Sheo Lal on 10.10.1975.

Learned trial court after discussing the evidence available on the file, dismissed the suit on the ground of limitation as well as on the ground that Sheo Lal can very well claim for making up the deficiency from the other land owned by Sheo Narain in other khewats. The trial court further noticed that in the year 1934, pursuant to a decree passed by the court, court auction took place in the year 1934 and Sheo Lal himself purchased some land owned by Sheo Narain.

However, learned first appellate court chose to reverse the finding of the trial court on the ground that in a suit for possession, the limitation would start from the date consolidation of holdings took place and since Sheo Narain had sold excess land than his share from khewat no.301, therefore, the suit filed by the plaintiff is liable to be decreed.

Now the stage is set for considering the questions of law:-

Question No.(i)

> ***Whether the suit filed for possession of the property which results in displacing bonafide purchasers for consideration, filed after a period of approximately 40 years is within limitation?***

It is not in dispute that Sheo Narain sold land to various purchasers between 1934 to 1945. If the suit filed by the plaintiff is to be decreed, it would result in displacement of the purchasers who purchased the property almost 40 years before the institution of the suit.

In the considered opinion of this court, the suit filed by the plaintiff was barred by time. Even if the plaintiff was to file a suit for declaration that such sale deeds does not effect his rights, the suit would be beyond time.

Learned first appellate court committed an error in forming an opinion that the limitation would to file the suit would begin to run from the date of consolidation of holdings. Consolidation of holdings did not give cause of action to the plaintiff. Cause of action, if any, accrued in favour of the plaintiff on the day Sheo Narain sold land in khewat no.301 in excess of his share, which would be at the most in the year 1945. At that time, the Limitation Act, 1908 was applicable. In the new Act i.e. The Limitation Act, 1963 (hereinafter referred to as 'the 1963 Act'), for relief of possession, substantial changes were made. Under the Limitation Act of 1908, the limitation for filing a suit for possession was 12 years.

In view thereof, the limitation for filing the suit for possession expired before coming into force of 1963 Act.

Section 31 of the Limitation Act, 1963 clearly provides that on the enactment of 1963 Act, if the limitation for filing a suit which was governed by Indian Limitation Act, 1908 has expired, the new enactment would not give fresh cause of action. As per Article 144 of the Indian Limitation Act, 1908, time for filing the suit for possession had already expired before coming into force of the Limitation Act, 1963.

In view of the aforesaid, question no.(i) is answered in favour of the appellants.

<u>QUESTION NO.(ii)</u>

> ***Whether one of the co-owner (all brothers) can challenge the sale deeds executed by another co-owner on the ground that the sale made by one brother in a particular khewat was more than his share without claiming any relief against legal heirs of the co-owner who is alleged to have sold excess land?***

In the present case, it is not disputed that Sheo Narain, Sheo Lal and Ramjiwan were joint owners of the land comprised in different khewats as noticed in the earlier part of the judgment. If Sheo Narain had sold land in excess of his share in particular khewat, the other brother always had a right to seek making up of the deficiency from remaining land in the hands of Sheo Narain,. In the present case, plaintiff did not take any step in this regard for a period of 40 years.

Still further Ramjiwan, the third brother of the parties have not claimed any such relief till date. At the cost of repetition, sales made by Sheo Narain were between the period 1934 to 1945. If the plaintiff was aggrieved of the sale of excess share in khewat no.301, he could have very well sought relief against Sheo Narain but no relief was sought.

Still further, learned trial court has recorded a finding that defendants-appellants are bonafide purchasers for valuable consideration. This finding has not been reversed by the first appellate court.

In view of the aforesaid, question no.(ii) is also answered in favour of the appellants.

Plaintiff, if permitted under the law, would be entitled to file a suit for making up the deficiency from the other land of Sheo Narain, if available.

Resultantly, appeal filed by the defendants-appellants is allowed, judgment and decree passed by the learned first appellate court is reversed and that of the trial court is restored.

May 16, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No