

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.2007 of 1999 (O&M)
Date of decision:15.02.2018**

Deepak Kumar

... Appellant

Vs.

Pritam Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P.S.Thiara, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for joint possession claiming 1/4th share in the land measuring 64 kanals 0 marla comprised in khewat/khatoni no.212/393, 394 and khasra number 29//4(8-0), 5(8-0), 8(8-0), 13(8-0), 6(8-0), 7(8-0), 14(8-0), 15(8-0), total kitas 8, as per jamabandi for the year 1988-89, situated in village Sabuwal, Tehsil Sultanpur Lodhi District Kapurthala, has been dismissed by both the Courts below.

Before advertng to the rival contention of learned counsel for the appellant-plaintiff, it would be apt to give preface of the matter.

The appellant-plaintiff instituted a suit claiming the joint possession of land by way of declaration that he had 1/4th share in the suit land on the premise that defendant no.1 claimed the ownership of land measuring 16 kanals out of total suit land described in the head note of the plaint on the basis of alleged sale deed dated 8.10.1987 alleged to be executed by the plaintiff in

favour of defendant no.1. The sale deed was void-abinitio and did not confer any title of defendant no.1, for, the plaintiff was minor at the time of execution of the sale deed, as he was born on 16.2.1970. The defendants were requested many time to admit the claim of the plaintiff as joint owner in possession to the extent of $\frac{1}{2}$ share and as well as for cancellation of the sale deed but the same was refused which necessitated the plaintiff to institute the suit. Previously a similar suit against present defendants and four other persons was filed which was dismissed under Order 9 Rule 2 CPC on 3.2.1992.

Upon notice, the defendants hotly contested the suit by taking preliminary objections/customary pleas with regard to locus standi and limitation. On merits, it was stated that defendant no.1 was owner in possession of the suit land to the extent of $\frac{3}{8}$ th share by virtue of sale deed dated 8.10.1987 executed by plaintiff in his favour and also sale deed 3.10.1989 executed by defendant no.2 in favour of defendant no.1. Against the dismissal of the suit, plaintiff filed a revision before this Court which was dismissed on 20.11.1992 and therefore, espoused the claim again. It was stated that plaintiff sold his $\frac{1}{2}$ share out of $\frac{1}{4}$ share to defendant no.1 vide sale deed dated 8.10.1987 and remaining $\frac{1}{4}$ share was sold by him with Shingara Singh, Balkar Singh, Jaswant Singh and Sital Singh vide sale deed dated 21.10.1987. Similarly defendant no.2 sold his $\frac{1}{8}$ th share with defendant no.1 through sale deed dated 3.10.1989. The remaining $\frac{1}{8}$ th share was sold by defendant no.2 with Gurcharan Singh through sale deed dated 3.10.1989, remaining $\frac{1}{4}$ share was sold by defendant no.2 with Balkar Singh, Jaswant Singh, Shingara Singh and Sital Singh through sale deed

dated 3.10.1989, therefore, defendant no.1 was owner in possession of the suit land alongwith Shingara Singh and others. It was stated that the sale deed executed by the plaintiff was valid one as he was major and the mutation in pursuance of the sale deeds was sanctioned by the revenue authorities in favour of defendant no.1.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the sale deed dated 8.10.87 in favour of defendant no.1 is void, fake, sham, illegal and void abinitio? If so, its effect? OPP*
- 2. Whether the plaintiff is entitled to joint possession as prayed for? OPP*
- 3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
- 4. Whether the suit is time barred? OPD*
- 5. Whether the suit is bad for mis-joinder of the parties? OPD*
- 6. Whether the suit is in the present form is not maintainable as the suit against present defendant and Shangara Singh, Balkar Singh, Jaswant Singh and Sital Singh sons of Puran Singh was dismissed on 3.2.1992.*
- 7. Whether the suit in the present form is not maintainable in view of preliminary objections no.3 & 5? OPD*
- 8. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD*

9. *Whether the suit is bad for non-joinder of necessary parties? OPD*

10. *Relief.”*

In order to prove case, plaintiff examined PW1 Rakesh Kumar, Ahalmad of Additional District Judge, Kapurthala, PW2- Gurdip Singh, Head Master, who proved on record date of birth certificate Ex.P1 and plaintiff himself appeared as PW3, who brought on record jamabandi Ex.P2, birth certificate Ex.P3, sale deeds Ex.D1 and Ex.D2 and his own statement in the previous suit Ex.D3; PW4- Tejpal, father of the plaintiff, who admitted the sale deed Ex.D4; PW5- Ram Pal; PW6 Kewal Singh; PW7 Surjit Singh and closed the evidence in affirmative.

To rebut the aforementioned evidence, defendants examined DW1- Daulat Ram, who brought on record birth entry of Saroj Bala daughter of Jai Pal Ex.DW1/A; DW2- Ram Singh, Deed Writer scribe of the sale deed dated 8.10.1987 (Ex.DW2/A); DW3-Harbhachan Singh, Namberdar marginal and attesting witness of the sale deed dated Ex.DW2/A. DW4- Ranjit Sood, officer of Canara Bank, Kapurthala, who proved account no.5226 of plaintiff opened on 8.10.1987; Pritam Singh- defendant no.1 appeared as DW5, DW6-Amarjit Singh Nambardar; DW7 Nirmal Singh; DW8-Shangara Singh, marginal and attesting witness of sale deed dated 3.10.1989 (Ex.DW8/A), who brought on record various other documents and closed the evidence.

The trial Court on the basis of preponderance of evidence dismissed the suit on merit as well as on limitation and appeal filed before the Lower Appellate Court also met with the same fate.

Mr. P.S.Thiara, learned counsel appearing on behalf of the appellant submitted that both the Courts below have erred in discarding the most convincing evidence produced by the plaintiff,i.e., school leaving certificate Ex.P1 and birth certificate Ex.P3 on record, wherein the date of birth of the appellant was recorded as 16.02.1970. Ex.P3 did not prove the birth entry of appellant which has erroneously relied upon by the Courts below. There was utter confusion in the mind of the Courts below with regard to the birth certificate Ex.P3 with birth certificate Ex.D6. There was no occasion for the plaintiff to withhold the entire evidence with regard to date of birth which had been proved on record as birth entry was per se admissible. Once the appellant-plaintiff was minor, it could not be believed that he was operating his account from 8.10.1987, i.e., date of sale deed till 5.2.1994 as noticed by the Courts below.

The earlier suit was not decided on merits but was dismissed under Order 9 Rule 2 CPC, therefore, the suit was not barred.

As regards findings on issue no. 4 qua limitation, he submitted that suit for possession was based upon the title which is covered under Article 65 of Limitation Act, and the same was within the prescribed period therefore, the provisions of Article 60 would not apply as erroneously noticed by the Courts below and thus urged this Court for setting aside the findings under challenge.

There is no representation on behalf of the respondents despite service. Accordingly, I proceed to decide the appeal.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees, as well as record of both the Courts

below and of the view that there is no force and merit in the submissions of Mr. Thiara.

Admittedly, date of birth of the appellant was 16.02.1970 and he attained the majority in the year 1988, though the sale deed is of 8.10.1987, at that time, he was about 17 years of age, whereas, the suit had been filed in the year 1993. Limitation to file the suit by a minor on attaining the age of majority is 3 years. It has also been proved on record that he was maintaining account books from the date of sale deed i.e. 8.10.1987 and even during pendency of the suit. All these facts would show that he was major, had the full trappings of adult and knew the pros and cons of hard fact of life. No explanation has come forward in not filing the suit upto 1990.

Mr. Thiara, has not been able to refer any document from the record to establish that date of birth of appellant was other than the date noticed by the Courts below or the handicapness in filing the suit after attaining the age of majority with promptitude, though he was 17 years and few months at the time of execution of the sale deed. All these factors weighed in the mind of the Courts below while arriving at concurrent findings of facts and law.

In view of what has been observed above, the findings of facts and law arrived at both the Courts below, much less arguments of Mr. Thiara, do not enable this Court to form a different opinion than the one arrived at as no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 15, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No