

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

RSA No.2121 of 2010 (O&M)

Date of decision : 05.09.2018

Harbhajan Kaur @ Bhajan Kaur

...Appellant

Versus

Satnam Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Advocate for the appellant.

Ms. Rupinder Kaur Thind, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.10942-C of 2018

This is an application for producing documents Annexure A-1 to A-6 as additional evidence.

Application is being considered with the main judgment.

CM No.6445-C of 2010

For the reasons stated in the application, which is duly supported by an affidavit, delay of 8 days in refiling the present appeal is condoned.

Application is allowed.

Main case

The defendant-appellant is in the Regular Second Appeal

against the judgment passed by the learned First Appellate Court reversing the judgment and decree passed by the learned trial Court.

The plaintiff-Satnam Singh claiming to be the successor-in-interest of Gurmit Kaur, his grandmother on the basis of the Will dated 09.08.1994 had filed a suit for claiming that he is joint owner in possession of the property in dispute and the sale deed executed by late Smt. Gurmit Kaur on 13.06.1990 is forged and fabricated. It may be noticed that Gurmit Kaur had executed the sale deed in favour of Bhajan Kaur, her daughter on 13.06.1990.

The suit was contested by the defendants.

It was pleaded that Gurmit Kaur during her lifetime had filed a suit challenging the sale deed and thereafter entered into a settlement with defendant-Bhajan Kaur and withdrew her suit by making a statement in the Court on 24.07.1995 which is part of the record.

Learned trial Court after finding that the suit has been filed after a delay of 11 years, dismissed the suit. The Court noticed that the plaintiff when appeared in the evidence, admitted that he had knowledge of the sale deed in the year 1995. However, in appeal, the First Appellate Court has reversed the judgment passed by the learned trial Court and decreed the suit. Learned First Appellate Court has given three following reasons:-

- a) The payment of the sale consideration has not been proved.
- b) The attesting witnesses of the sale deed have not been examined so the sale deed is not proved on file.

- c) The sale deed was never executed by Smt. Gurmit Kaur.

In the considered opinion of this Court, the following substantial questions of law arise for determination by this Court:-

- i) Whether a successor-in-interest is entitled to maintain the suit which could not be filed by his predecessor-in-interest in view of the provisions of Order 23 Rule 1(4) of the Code of Civil Procedure?
- ii) Whether in the absence of denial by the Executant a registered sale deed, attesting witnesses are required to be examined to prove the execution of the sale deed?
- iii) What is the limitation for filing the suit challenging a registered sale deed?

NOW THE STAGE IS SET FOR CONSIDERING THE QUESTIONS OF LAW FRAMED:-

i) Whether a successor-in-interest is entitled to maintain the suit which could not be filed by his predecessor-in-interest in view of the provisions of Order 23 Rule 1(4) of the Code of Civil Procedure?

As per Order 23 Rule 1 Sub-Rule 4 of CPC, if the plaintiff abandons his suit or part of the claim or withdraws from a suit or part of a claim without the permission referred to in Sub-Rule 3, he shall be precluded from instituting a fresh suit. Sub-Rule 3 provides for permission to file a fresh suit on same cause of action. Order 23 Rule 1 CPC is extracted as under:-

“ORDER XXIII

WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim -

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

*(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),
he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.*

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.] ”

In view of the withdrawal of the first suit on 24.07.1995, the plaintiff, who has stepped into the shoes of Gurmit Kaur, could not maintain a subsequent suit as Gurmit Kaur herself was debarred from filing the suit. The plaintiff is only claiming right through Gurmit Kaur. Hence, question No.1 is answered in favour of the appellant.

ii) Whether in the absence of denial by the Executant a registered sale deed, attesting witnesses are required to be examined to prove the execution of the sale deed?

A sale deed is not required to be attested by two attesting witnesses. The marginal witnesses are not mandatory for execution and registration of the sale deed. Once a sale deed has been executed, unless Executant disputes its execution, such sale deed is admissible in evidence. For proving the registered sale deed, examination of the marginal witnesses are not necessary. Reference in this regard can be made to the judgment of Hon'ble the Supreme Court in case (2018) 1 SCC 585, Smt. Bayanabai Kaware Vs. Rajendra son of Babu Rao Dhote.

Hence, question No.2 is also answered in favour of the appellant.

iii) What is the limitation for filing the suit challenging a registered sale deed?

As per the provisions of Section 3 of the Transfer of Property

Act, there is a statutory presumption with regard to “a person is said to have notice” of a registered document. In the present case, the registered document i.e. the sale deed was executed on 13.06.1990. The plaintiff having stepped into the shoes of the Executant, had knowledge of the same. Therefore, the limitation for seeking cancellation of the registered instrument i.e. the sale deed is three years from the date it was executed. Still further, Gurmit Kaur had herself filed a suit challenging the sale deed in the year 1994 which was withdrawn on 24.07.1995. Hence, the Appellate Court had committed an error in returning a finding that the suit is within limitation.

Hence, question No.3 is answered in favour of the appellant.

Learned counsel for the respondents has pointed out that the suit was filed on the basis of the inheritance for joint possession and, therefore, the suit is within limitation.

This Court has considered the submission. However, finds no substance therein. Once, Gurmit Kaur had executed the sale deed in favour of her daughter without getting rid of the aforesaid sale deed, the plaintiff had no right in the property.

Learned First Appellate Court has also further erred in recording a finding that the payment of the sale consideration is not proved. In the considered opinion of this Court, once in a registered document, the Executant has admitted the receipt of the consideration which has been duly acknowledged before the Sub-Registrar, there is a presumption that the sale deed is for a valid sale consideration. In the

present case, Gurmit Kaur filed a suit but she later on withdrew, therefore, Satnam Singh who has stepped into the shoes of Gurmit Kaur, could not even challenge the sale deed on the ground that no consideration has been paid.

For the reasons recorded above, the judgment passed by the learned First Appellate Court is set aside and that of the trial Court is restored.

Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

05.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No