

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2261 of 2010(O&M)

Date of Decision:20.11.2018

Jarnail Singh and others

---Appellants

vs.

Jagir Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Chetan Bansal, Advocate
for the appellants

Mr. R.K.Handa, Advocate
for the respondents

Rekha Mittal, J.

The present appeal directs challenge against consistent findings recorded by the courts whereby suit for possession by way of redemption of land measuring 33 kanal 6 marlas, detailed in head note of the plaint was partly decreed by the trial court to the following effect:-

“.....the suit of the plaintiff must partly succeed and the same is hereby decreed to the effect that on deposit of entire mortgage amount Rs. 21,000/- in the court within two months from the passing of this decree, the suit property stands redeemed and the plaintiffs no. 3 and 4 are declared joint

owners to the extent of 6 kanal 12 marlas in the suit property measuring 33 kanals 6 marlas alongwith Lrs. of Achhar Singh namely Jarnail Singh, Bhagat Singh, Ajaib Singh and Sukhjinder Singh and they are entitled to separate possession of the suit property by way of partition from the competent court of law.”

The appeal preferred by the defendant/appellant now represented by his LRs namely Jarnail Singh and others came to be dismissed by the Additional District Judge, Amritsar vide judgment and decree dated 22.12.2009.

The facts relevant for disposal of present appeal are that as per case of the respondents-plaintiffs, land in dispute was owned by Kehar Singh son of Hira Singh. On death of Kehar Singh, his property devolved upon his son Swaran Singh and heirs of his pre-deceased son Gurcharan Singh (plaintiffs-respondents). Swaran Singh died issueless and widowless. His property was inherited by the respondents-plaintiffs being Lrs of Gurcharan Singh. Kehar Singh mortgaged the suit land in favour of Achhar Singh (since deceased) for Rs. 21,000/-, vide registered mortgage deed dated 21.11.1972. The period of redemption is over and plaintiffs are entitle to get the land redeemed on payment of Rs. 21,000/-. The defendant is alleging that sale deed dated 18.12.1989 was executed by plaintiffs No. 2 to 4. The alleged sale deed is forged and fabricated. Plaintiffs No. 2 to 4 were minors at the time of alleged execution of sale deed and as such the same is illegal, null and void.

The appellant (since deceased) now represented by his Lrs filed

the written statement raising preliminary objections inter alia that the suit is not maintainable, plaintiffs have no locus standi and cause of action to file the suit; suit is hopelessly time barred; mortgage had merged into ownership by the principle of merger. Achhar Singh purchased half share of suit land from Swaran Singh son of Kehar Singh. After death of Kehar Singh, the defendants purchased half share belonging to heirs of Gurcharan Singh, other son of deceased Kehar Singh. It is further averred that the suit is not properly valued for the purpose of court fee and jurisdiction.

The respondents filed replication controverting the averments raised in the written statement while reiterating their stand taken in the plaint.

The controversy between the parties led to framing of following issues by the trial court:-

1. Whether the plaintiffs are entitled to redemption of suit land, if so on payment of what amount? OPP
 2. Whether the plaintiffs have no locus-standi to file this suit OPD?
 3. Whether the suit is not maintainable in the present form? OPD
 4. Whether the plaintiffs are estopped from filing this suit by their own act and conduct? OPD
- 4-A) Whether the sale deed dated 18.12.1989 executed by plaintiffs No. 2 to 4 in favour of defendant is illegal, forged and fabricated and further whether plaintiffs no. 2 to 4 were not competent to execute the sale deed being minors ? OPP
- 4-B) Whether suit is within limitation? OPP

4-C) Whether the mortgage has merged into ownership as alleged in preliminary objection no. 5 of the written statement dated 10.4.2006? OPD

4-D) Whether suit is properly valued for the purposes of court fee and jurisdiction? OPP

4-E) Whether Swaran Singh had sold his share in the suit land to the father of the defendant, if so its effect ? OPD

4-F) Whether the plaintiffs are entitled to possession of the suit land? OPP

5. Relief.”

The parties were permitted to adduce evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the trial court decided issues No. 1 and 4-B taken up together in favour of the respondents-plaintiffs. Issues No. 2 to 4 were answered against the defendant-appellant and issues No. 4-A, 4-C and 4-E were decided with the observations that sale deed dated 18.12.1989 is illegal, null and void qua share of plaintiffs No. 3 and 4 as on the date of execution of sale deed Ex. D1, they were minors. On the basis of purchase of share of Swaran Singh, Jagir Kaur, Jatinder Singh and Gurmit Kaur, defendants have become co-sharers in the suit property and mortgage had merged into ownership. Accordingly, issue No. 4-A was decided partly in favour of the plaintiffs/respondents but issues No. 4-C and 4-E were decided in favour of the defendant(s). Eventually, the suit was decreed partly, noticed hereinbefore.

The appeal preferred by Achhar Singh defendant through his

Lrs did not find favour with the Appellate Court but there is slight modification holding that the appellant(s) is entitle to receive half of total sale consideration of Rs. 4,25,000/- and lower court judgment shall be implemented on payment of said amount besides other conditions imposed by the said court. However, findings of the trial court on all the issues were affirmed.

Counsel for the appellants has assailed the impugned judgments primarily on two counts. The first submission made by counsel is that prayer of the respondents seeking setting aside of sale deed dated 18.12.1989 purported to be executed by the plaintiffs is clearly barred by limitation even qua share of Talwinder Singh and Jassa Singh, stated to be minors, thus, incompetent to alienate their share in suit land to the extent of 1/5th share each out of half share of land measuring 33 kanal 6 marlas inherited by Sh. Gurcharan Singh, predecessor in interest of Jagir Kaur and others on death of Kehar Singh, father of Gurcharan Singh. To bring home his contention, it is argued that in the original suit instituted in the year 1998, the respondents-plaintiffs did not challenge sale deed dated 18.12.1989. Achhar Singh filed written statement dated 26.2.1999 wherein a plea was raised with regard to purchase of suit land, therefore, there is no question of any alleged mortgage and redemption thereof. It is further argued that later in the year 2006, an application was filed for amendment of the plaint and in reply thereto, the defendant raised a specific plea that amendment cannot be allowed as claim of the plaintiffs to challenge sale deed dated 18.12.1989 is barred by limitation. It is further argued that the application was allowed by the trial court vide order dated 9.3.2006, subject

to payment of costs and as a consequence thereof, para No. 5 of the plaint was amended. It is further argued that since the defendants raised a specific plea with regard to challenge to sale deed being barred by limitation, amendment of plaint allowed in the year 2006 would not relate back to the date of institution of suit on 20.5.1998, therefore, challenge to sale deed of 1989 by amendment in the year 2006 would be hit by bar of limitation. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **L.C. Hanumanthappa (Since dead) Represented by His Lrs vs. H.B. Shivakumar AIR 2015 (SC) 3364.**

Counsel would further argue that in case plea of the appellants with regard to non relate back is not accepted, suit filed on 20.5.1998 to challenge sale deed dated 18.12.1989 is otherwise barred by limitation even if plea of the respondents-plaintiffs is accepted on its face value that Talwinder Singh, plaintiff No. 3 was born on 10.2.1976 and Jassa Singh was born on 22.3.1977, when examined in the light of provisions of Section 6 of the Limitation Act, 1963 (in short "the Act"), counsel would clarify that disability of Talwinder Singh and Jassa Singh to file the suit being minors, ceased to exist in February 1997 qua Talwinder Singh and March 1998 qua Jassa Singh but the present suit is filed in May 1998. In addition, it is argued that plaintiffs have even failed to establish their case that Talwinder Singh was born on 10.2.1976 and Jassa Singh (Jaspal Singh) on 22.3.1977 as documentary evidence regarding their date of birth i.e. certificates of matriculation issued by the Punjab School Education Board Exs. P7 and P5 are not sufficient to conclusively establish that they were born on the dates recorded in the certificates. According to counsel, neither mother of

Talwinder Singh and Jaspal Singh @ Jassa Singh appeared in the witness box to corroborate the date of birth recorded in matriculation certificates nor any other witness who had special means of knowledge with regard to date of birth of the plaintiffs has been examined. For this purpose, reference has been made to judgments of Hon'ble the Supreme Court **Birad Mal Singhvi vs. Anand Purohit 1988 Civil Court Cases 503, Madan Mohan Singh and others vs. Rajni Kant and others AIR 2010 (SC) 2933, Ravinder Singh Gorkhi vs. State of U.P. 2006(3) RCR (Civil) 45.**

Counsel has further assailed findings that Talwinder Singh and Jassa Singh were minors at the time of execution of sale deed dated 18.12.1989 by making the aforesaid submissions that date of birth recorded in matriculation certificates is not conclusive evidence of date of birth and the certificates, at best, can have probative value but the same needed corroboration from other evidence which the respondents-plaintiffs have failed to adduce despite the fact that their mother is one of the plaintiffs through whom they instituted the suit as plaintiffs No. 3 and 4.

Counsel representing the respondents-plaintiffs has supported the judgments impugned with the submission that courts have rightly held that Talwinder Singh and Jassa Singh were minors at the time of execution of sale deed dated 18.12.1989, therefore, they were not competent to enter into a contract for sale of immovable property. It is further argued that matriculation certificates recording date of birth of Talwinder Singh and Jassa Singh are admissible in evidence under Section 35 of the Indian Evidence Act and have rightly been relied upon by the courts to record consistent findings in favour of the respondents that they were minors at the

time of execution of sale deed dated 18.12.1989. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Desh Raj vs. Bodh Raj 2008(1) RCR (Civil) 212.** Reference has also been made to judgment of the Calcutta High Court **Anadi Mohon Ghose and others vs. Rabindra Nath Dutta and others AIR 1962 (Calcutta) 265.**

So far as the question of limitation to challenge sale deed dated 18.12.1989 is concerned, it is argued that as the trial court allowed amendment of the plaint without any condition that the same shall not relate back to the date of institution of suit and order passed by the trial court has attained finality, the appellants cannot be heard to say that amendment of plaint to challenge the sale deed in question would not relate back to the date of institution of suit on 20.5.1998. It is further argued that in the given scenario, the appellants cannot derive any advantage to their contention from the judgment in **L.C. Hanumanthappa (Since dead) Represented by His Lrs's case (supra).** In addition, it is argued that as the respondents-plaintiffs challenged validity of the sale deed in question on the ground of fraud, the limitation would start only from the date of knowledge of the document. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Santosh vs. Jagat Ram and another 2010(2) RCR (Civil) 206.**

I have heard counsel for the parties, perused the paper book and records.

The two issues that require determination are:-

1. Whether date of birth recorded in matriculation certificate is

conclusive proof of minority/majority of a person whose age
is in dispute in civil suit?

2. Whether findings of the courts on the question of limitation
under issue No. 4-B suffer from perversity?

Before advertng to the submissions made by counsel for the parties, it is pertinent to mention that though the respondents-plaintiffs by way of amendment of plaint made in the year 2006 have sought to assail sale deed dated 18.12.1989 but they did not seek declaration to set aside the sale deed in question, on the grounds raised in para 5 of the plaint. It appears that the plaintiffs intentionally avoided adding the relief of declaration so that their claim may not be rejected on the ground of limitation.

The plaintiffs have raised the plea that plaintiffs No. 2 to 4 namely Jatinder Singh, Talwinder and Jassa Singh sons of Gurcharan Singh were minors at the time sale deed dated 18.12.1989 was executed, therefore, the said sale deed is null and void. It is averred that date of birth of Talwinder Singh is 10.2.1976 and of Jatinder Singh in the year 1976. Nothing has been mentioned in para 5 with regard to date of birth of Jassa Singh. Jagir Kaur, mother of the plaintiffs was examined and cross examined in the year 2003 before the plaint was amended to assail the aforesaid sale deed and her testimony is silent about date of birth/age of her sons. Subsequent thereto, she never appeared in the witness box to depose about date of birth of plaintiffs No. 2 to 4.

Jassa Singh plaintiff No. 4 tendered into evidence his affidavit Ex. PW3/A by way of examination in chief. A relevant extract therefrom

reads as follows:-

“I and plaintiffs No. 3 and 4 were minors at the time of execution of the alleged sale deed and as such the question of execution of sale deed does not arise. The said sale deed is illegal, null and void document. I born in the year 1976. Date of Birth of Talwinder Singh is 10.2.1976 and as such the alleged sale deed dated 18.12.1989 is liable to be declared illegal, null and void.”

Talwinder Singh plaintiff No. 3 tendered into evidence affidavit Ex. PW4/A by way of examination in chief, to challenge sale deed dated 18.12.1989. He has deposed to the following effect:-

“The alleged sale deed is forged and fabricated document. I and plaintiffs Nos. 2 and 4 were minors at the time of execution of the alleged sale deed and as such the question of execution of sale deed does not arise. The said sale deed is illegal, null and void document. My date of Birth is 10.2.1976. Date of Birth of Jatinder Singh is in the year 1976 and as such the alleged sale deed dated 18.12.1989 is liable to be declared illegal, null and void.”

There is no documentary evidence with regard to date of birth of Jatinder Singh. The courts have rejected plea of the plaintiffs that Jatinder Singh was minor at the time of execution of sale deed dated 18.12.1989. The statements of Jassa Singh, Talwinder Singh as well as pleadings are silent with regard to date of birth of Jassa Singh. On the contrary, Jassa Singh in his affidavit has stated that he was born in the year

1976. Talwinder Singh would state that date of birth of Jatinder Singh is of the year 1976. If Jatinder Singh was born in the year 1976, there is no possibility of Talwinder Singh or Jassa Singh having born in February 1976. This apart, Jassa Singh and Talwinder Singh do not reveal as to the source of knowledge qua their date of birth.

Jagir Kaur or any other relative of the plaintiffs did not appear in the witness box to depose as to what is the basis of date of birth of Talwinder Singh and Jassa Singh recorded in the matriculation certificates or the person at whose behest date of birth was recorded in the school records. Hon'ble the Supreme Court in **Birad Mal Singhvi's case (supra)** has held that no doubt, Exs. 8, 9, 10, 11 and 12 are relevant and admissible but these documents have no evidentiary value for the purpose of proof of date of birth of Hukmi Chand and Suraj Prakash Joshi as the vital piece of evidence is missing because no evidence was placed before the court to show on whose information the date of birth of Hukmi and Suraj Prakash Joshi were recorded in the aforesaid documents. Neither of the parents of the two candidates nor any other person having special knowledge about their date of birth was examined by the respondent to prove the date of birth as mentioned in the aforesaid documents. Parents or near relations having special knowledge are the best person to depose about the date of birth of a person.

In **Madan Mohan Singh and others' case (supra)** by relying upon judgment in **Birad Mal Singhvi's case (supra)**, Hon'ble the Apex Court has held that if a person wants to rely upon a particular date of birth and wants to press a document in service, he has to prove its authenticity in

terms of Section 32(5) or Sections 50, 51, 59, 60 and 61 etc. of the Evidence Act by examining the person having special knowledge, authenticity of date, time etc. mentioned therein (Vide: **Updesh Kumar and others vs. Prithvi Singh and others, 2001(1) RCR (Civil) 637 : (2001) 2 SCC 524;** and **State of Punjab v. Mohinder Singh, 2005(2) S.C.T. 401**).

On the contrary, in **Desh Raj's case (supra)** cited by counsel for the respondents, Hon'ble the Apex Court has held that an entry in any public or other official book or register or record, stating a fact in issue or relevant fact and made by a public servant in discharge of his official duty or by any other person in performance of a duty specifically enjoined by law of the country in which such book or register is kept, is itself a relevant fact. Having regard to the provisions of Section 35, entries in school admission registers in regard to age, caste etc., have always been considered as relevant and admissible. However, the court by referring to judgment in **Birad Mal Singhvi's case (supra)** has noticed that unless the parents or persons conversant with the date of birth were examined, the entry in the school register by itself will not have much evidentiary value. As the judgment in **Desh Raj's case (supra)** pertains to the question of caste and not date of birth, the respondents neither can be heard to say that **Desh Raj's case (supra)** lays down law contrary to what has been held in **Birad Mal Singhvi's case (supra)** nor they can derive advantage to their contention to say that matriculation certificate is sufficient much less conclusive to prove date of birth of Talwinder Singh and Jassa Singh.

In **Anadi Mohon Ghose and others' case (supra)**, Calcutta High Court has simply held that certificates are admissible under Section 35

of the Evidence Act. Admissibility and evidentiary value of a document are entirely different things. There is no denial that matriculation certificate is per se admissible in evidence but there is no such law/precedent to support contention of the respondents that date of birth recorded in matriculation certificate is conclusive to decide the question of minority/majority of the person concerned, in civil proceedings. In view of the above, it can safely be held that the courts failed to address the question if date of birth recorded in the matriculation certificate can be the basis to accept plea of the respondents/plaintiffs regarding minority of Talwinder Singh and Jassa Singh, in the light of relevant provisions of the Evidence Act and precedents on the issue, therefore, findings upholding plea of plaintiffs No. 3 and 4 that they were minors at the time of execution of sale deed dated 18.12.1989 are perverse and liable to be set aside.

This brings the Court to the question of challenge to sale deed being barred by limitation. Indisputably, application filed by the respondents for amendment of the plaint to assail sale deed in question was allowed without any condition/qualification except costs of Rs. 1,000/-. As has been rightly argued by counsel for the respondents, order allowing amendment of the plaint was neither challenged by way of revision before this Court nor in the first appeal preferred before the District Judge, therefore, the same has attained finality. The judgment in **L.C. Hanumanthappa (Since dead) Represented by His Lrs's case (supra)** cannot be applied in favour of the appellants because in the referred case, the court allowed the amendment expressly subject to the plea of limitation. It was held that the doctrine of relation back would not apply to the facts of

this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. However, in the case at hand, the amendment was allowed without any such stipulation of being subject to plea of limitation.

Indisputably, the suit was originally filed on 20.5.1998. As per case of the respondents-plaintiffs, Talwinder Singh was born on 10.2.1976 and Jassa Singh on 22.3.1977. Talwinder Singh became major in February 1994 and Jassa Singh in March 1995. Under Section 6 of the Act, a minor may institute the suit or make an application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule. A suit for declaration to challenge sale deed could be filed within three years from the date of its execution and in the present case the said period, at best, can be extended upto February 1997 in the case of Talwinder Singh and March 1998 for Jassa Singh i.e. three years from the date they became major as per their date of birth recorded in matriculation certificates.

There is no plea raised by the respondents-plaintiffs as to the date on which they came to know about existence of the sale deed in question even in the application for amendment of the plaint. On the contrary, no such plea had been raised that the plaintiffs came to know about existence of the sale deed only during pendency of the suit. Statements of Talwinder Singh and Jassa Singh by way of affidavits

tendered in examination in chief do not state as to the date on which they gained knowledge of sale deed dated 18.12.1989. The contention raised by counsel for the respondents by relying upon judgment of Hon'ble the Supreme Court in **Santosh's case (supra)** is not meritorious as no such plea has been raised by the respondents that they gained knowledge of the sale deed on a particular date and limitation to challenge the sale deed would start from that particular point.

This apart, no such plea has been raised by the respondents that the sale deed is the result of fraud, therefore, the same is nullity since its inception. There is one single sentence in para 5 that the sale deed is the result of forgery and fabrication but without any details of the said forgery or fabrication. Talwinder Singh and Jassa Singh have not led even an iota of evidence to say that the sale deed is the result of forgery and fabrication. In the given circumstances, plea of the respondents-plaintiffs to challenge the sale deed in question is clearly barred by limitation, therefore, findings of the courts on issue No. 4-B can not be allowed to sustain and accordingly set aside.

The courts did not examine if claim of the respondents to challenge sale deed is within limitation or otherwise. The trial court answered issue of limitation only with regard to redemption of mortgage for which there is limitation of 30 years from the date of expiry of period of mortgage i.e. 8 years with effect from the date of mortgage deed dated 21.11.1972.

The entitlement of the plaintiffs to seek redemption was certainly based upon their right of ownership of suit land. The courts have

consistently held that the plaintiffs were not owners of suit land measuring 33 kanal 6 marlas except to the extent of 6 kanal 12 marlas owned by Talwinder Singh and Jassa Singh by holding that sale deed dated 18.12.1989 cannot be upheld to the extent of their share on account of their incompetency to transfer their land. In view of discussion made hereinbefore, the respondents-plaintiffs neither are entitled to challenge the sale deed on account of their claim being barred by limitation nor their plea with regard to minority at the time of execution of sale deed is meritorious, therefore, Achhar Singh and his sons have become owner of the suit land on the basis of sale of half share of suit land by Swaran Singh and remaining half by successors in interest of Gurcharan Singh, thus, the respondents are not entitle to possession by way of redemption of suit land. Resultantly, findings of the courts on issues No. 1, 4-B and 4-A to the extent it was decided in favour of the respondents/plaintiffs are set aside. As a natural corollary, issues No. 1, 4-B and 4-B are decided against the respondents-plaintiffs and in favour of the defendant-appellant(s).

In view of what has been discussed hereinabove, the appeal is allowed. Judgments and decrees passed by the courts are set aside. As a result, suit filed by the respondents-plaintiffs is dismissed with costs throughout.

(Rekha Mittal)
Judge

20.11.2018
paramjit

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