

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

RSA No.4164 of 2012 (O&M)

Bagicha Singh

....Appellant

Versus

Jasbir Kaur and Ors.

....Respondents

Date of Order: 30.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chanan Singh, Advocate for the petitioners.

Mr. Anurag Chopra, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Plaintiff No.2-appellant is aggrieved of concurrent findings recorded by both the courts below whereby the suit filed by the plaintiffs for declaration and permanent injunction challenging sale deed dated 30.12.1993 got executed by Baj Singh (since deceased) now represented by his LRs, was dismissed vide judgment and decree dated 18.10.2010 and the appeal filed against the same has also been dismissed by lower Appellate Court vide judgment and decree dated 19.4.2012.

The said sale deed was challenged on the ground that the fraud and misrepresentation was played upon the plaintiffs and consequential mutation was outcome of the same and the same is liable to be set aside.

Aforesaid suit was contested by the defendants by raising the pleas of locus and maintainability etc. It was stated that the suit property was the self purchased property of Baj Singh deceased and the defendants

were owners in possession of the land comprising of four commercial shops and residential house, which was in knowledge of the plaintiffs all these years.

From the pleadings of the parties, the trial Court framed the following issues:

- “1. Whether the sale deed dated 30.12.1993 is illegal, null and void and not binding upon the plaintiff No.1?OPP*
- 2. Whether plaintiffs are entitled to declaration as well as injunction as prayed for?OPP*
- 3. Whether suit is not maintainable in the present form?OPD*
- 4. Whether plaintiffs have no locus standi to file the suit?OPD*
- 5. Whether plaintiffs have no cause of action to file the suit?OPD*
- 6. Whether suit is properly valued for the purposes of court fee?OPP*
- 7. Whether suit is within limitation?OPP*
- 8. Whether plaintiffs are estopped by their act and conduct from filing the suit?OPD*
- 9. Relief.”*

The trial Court on the basis of oral as well as documentary evidence dismissed the suit on issues Nos.1,2 & 7. Appeal filed against the same was also dismissed by the lower Appellate Court.

Learned counsel for the appellant submitted that the respondent-defendants had not been able to prove on record the sale deed. If at all, there was genuine transaction, nothing prevented the respondents-defendants to perform their part of contract and therefore, both the courts below ought to have set aside the sale deed on this ground alone. As soon

as the plaintiff-appellant acquired the knowledge of alleged fraud, the present suit was filed by invoking the provisions of Article 59 of the Limitation Act, 1963 (for short “the Act”).

Per contra, learned counsel for the respondents-defendants submitted that the registered documents carries presumption of truth and once the same was not challenged within a period of three years, the suit could not have been filed by taking the aid of provisions of Article 59 of Limitation Act until and unless gross illegality and perversity is found.

After hearing learned counsel for the parties and appraising the paper book, I find no merit in the submissions of learned counsel for the appellant, for, since the plaintiff challenged the sale deed, the onus was upon them to prove the same in terms of Order 6 Rule 4 CPC. For the sake of brevity, Order 6 Rule 4 CPC reads as under:

“Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.”

Learned counsel for the plaintiff-appellant could not point out any evidence in support of his pleas regarding misrepresentation or fraud being played upon the plaintiffs except bringing on record the fact of lodging of the FIR and the bald statement of the plaintiffs. Moreover, the plaintiffs in this case were estopped to challenge the sale deed since they were aware of the factum of alleged sale deed as far as back in 1993, which leads to applicability of principle of acquiescence. The suit, in my view,

could not have been filed under the parameters of Article 59 of the Limitation Act but would be falling under Article 58 of the Act. Both the provisions of Articles 59 as also 58 of the Act are reproduced hereunder:

Description of suit	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
58. To obtain any other declaration	Three Years	When the right to sue first accrues
59. To cancel or set aside an instrument or decree or for the rescission of a contract	Three Years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

From the perusal of aforesaid provisions, the case falls under the parameters of Article 58 as once the plaintiffs had acquired the knowledge of the sale deed, the onus was upon them to prove the same as has been rightly held by both the courts below. It was not a case of agricultural land that the plaintiffs were residents of some different place and had no knowledge about the aforesaid fact, for, all the while, defendants were very well residing in the residential house. No plausible explanation of the alleged cause of action has come forward in this respect enabling this Court to form a different opinion.

No ground is made out to interfere with the well reasoned judgments passed by both the courts below much less no substantial question of law arises for adjudication.

Dismissed.

April 30, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No