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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 21.02.2018

1.

RSA-1752-2013 (O&M)

Hardeep Singh

... Appellant(s)

Versus

Mohinder Singh (deceased through LRs)

... Respondent(s)

2.

RSA-1753-2013 (O&M)

Hardeep Singh

... Appellant(s)

Versus

Kamaljit Kaur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Nagra, Advocate
for the appellant(s).

Mr. Namit Gautam, Advocate
for respondent No.1 in RSA-1752-2013 and
for respondent No.2 in RSA-1753-2013.

Mr. Hemender Goswami, Advocate
for respondent No.2 in RSA-1752-2013 and
for respondent No.1 in RSA-1753-2013.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **RSA No.1752 of 2013** titled as **“Hardeep Singh V/s Mohinder Singh (deceased through LRs)”** and **RSA No.1753 of 2013** titled as **“Hardeep Singh V/s Kamaljit Kaur and others”** filed against the judgment and decree rendered

by the lower Appellate Court, whereby the judgment and decree of the trial Court decreeing the suit of the plaintiff has been reversed/set aside, in essence, the suit has been dismissed.

It would be apt to give preface of the matter before adverting to the rival contention of learned counsel for the parties.

The plaintiff instituted the suit challenging the sale deed 18.09.1987 to the extent of 90 sq. yards, out of 605 sq. yards and sale deed dated 27.01.1988 to the extent of 666-2/3 sq. yards, on the premise that Rajinder Singh, GPA-holder, by virtue of GPA dated 30.04.1986 (Ex.PW1-A) had exceeded his power as he was authorized to sell the land measuring 1 kanal 4 marals only and not beyond that. It was averred in the plaint that Rajinder Singh sold 210 sq. yds. to one Manpreet kaur Kaur, vide registered sale deed dated 24.11.1986 and further sold 605 sq. yds. to defendant No.1 on 18.09.1987, whereas he was entitled to sell 515 sq. yds. only, but he sold 90 sq. yds. excess of the share of the plaintiff without consent and again sold 666-2/3 sq. yds to defendant No.2 vide sale deed dated 27.01.1988 on the basis of the aforementioned power of attorney.

The aforementioned suit was contested by the defendants by taking the objection with regard to the maintainability, limitation and estoppel. The factum of Rajinder Singh attorney of the plaintiff was not denied. The parties led evidence in support of their case. The trial Court on the basis of the preponderance of the evidence decreed the suit. However, the defendants Nos.1 and 2 have filed the appeals independently before the lower Appellate Court, which have been allowed, whereby the judgment and decree of the trial Court dated 21.11.2007, has been reversed/set aside.

Mr. G.S. Nagra, learned counsel appearing on behalf of the

appellants-plaintiff submits that the power of attorney dated 30.04.1986 (Ex.PW1/A) has been proved to the hilt, which has not been denied by the defendants. The contents and terms and conditions are sacrosanct and cannot be deleted. It was only Rajinder Singh, who was authorised to sell the land measuring 1 kanal 4 marals, whereas from the perusal of the facts, as noticed above, exceeded his jurisdiction. The plaintiff acquired the knowledge only in the year 1999, when Rajinder Singh died and on acquiring the knowledge from the revenue record, filed the suit on 18.09.1999. The lower Appellate Court has committed illegality and perversity in according the status to defendants of a *bona fide* purchaser in the absence of any defence or issue being pressed, therefore, the findings are totally erroneous and illegal. The Court below has also committed illegality in allowing the application of additional evidence permitting the defendants to place on record the additional evidence, which the defendants could have led at the time, when the trial was on, thus, urges this Court for setting aside the findings under challenge.

Mr. Namit Gautam and Mr. Hemender Goswami, learned counsel appearing on behalf of the defendants-Mohinder Singh and Kamaljit Kaur, respectively, submits that the judgment and decree of the lower Appellate Court is perfectly legal and justified and do not call for interference as it is based upon the appreciation of oral and documentary evidence. Pritam Singh in cross-examination admitted that he had the knowledge of the sale deed as the defendants intended to take the possession within one year from the sale deed. No explanation has come forward in not filing the suit in the year 1990 and therefore, he could not take the benefit of Article 59 of the Limitation Act, whereas the suit has

been filed on 18.09.1999. The additional evidence brought on record shows that Rajinder Singh on the basis of same very attorney sold the land to the different persons, but the said sale deeds have not been challenged. The plaintiff has also not explained as to whether he received the consideration or not, thus, failed to discharge the onus as enshrined under Section 101 of the Indian Evidence Act.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Nagra, for, the plaintiff has failed to discharge the onus as the pleadings and evidence are bereft of the fact that whether he received the consideration/receipts of the sale executed by his agent. No explanation has come forward in not filing the suit within a period of three years from the date of the execution of a registered document. It is a ploy to bring the suit in the year 1999 by connecting it to the death of Rajinder Singh. In cross-examination, Pritam Singh candidly admitted that defendants had intended to take the possession within one year from the date of the sale deed, thus, the suit was *ex facie* bared by law of limitation as a registered document can only be set aside within a period of three years. The plaintiff, in my view, cannot take the benefit of Article 59 of the Limitation Act, which gives a cause of action to challenge the registered document within three years from the date of execution of the knowledge, rather the provisions of Article 58 of the Limitation Act would apply. All these factors have been dealt with *in extenso* by the lower Appellate Court being the last court of fact and law.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate

Court as the same is based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, both regular second appeals are dismissed.

21.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasonedYes/ No

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Whether ReportableYes/ No