

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

RSA No.3727 of 2013

Ram Bai and Ors.

...Appellants

Versus

Vikram Singh Raghav and Ors.

....Respondents

Date of Order: 21.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate for the appellants.

Mr. Sanjeev Kumar Panwar, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Defendants-appellants are challenging concurrent judgments and decrees passed by both the courts below whereby suit of the plaintiffs-respondents for declaring the sale deed dated 06.9.1995 as null and void with consequential relief of permanent injunction has been decreed vide judgment and decree dated 22.9.2012 passed by learned Civil Judge (Jr. Division), Gurgaon and the findings vide judgment and decree dated 27.4.2013 affirmed in appeal by the lower Appellate Court.

Plaintiffs-respondents instituted the suit on the premise that defendant No.1 being the real brother of the plaintiffs was co-owner to the extent fully detailed and described in para 1 of the plaint. However, in the month of July 1993, a family settlement had taken place whereby defendant No.1 allotted the land in question to the plaintiff but wrong entries were existing in the revenue record showing defendant No.1 as co-owner. In this view of the fact, a civil suit was filed by the plaintiffs against the appellants-

defendants who filed written statement. On the basis of evidence and pleadings placed on record, a judgment and decree dated 14.9.1995 came to be passed by the trial Court in that suit vide which appellant-defendant No.1 prior to filing of written statement during the pendency of the previous suit while playing a fraud had effected sale deed dated 06.9.1995 in favour of defendant No.2, therefore, cause of action arose to file the present suit.

Upon notice, the defendants appeared and contested the suit objecting that there was no family settlement nor they allotted the land in question to the plaintiff. Sale deed was effected on the basis of entry in the revenue record much less decree was collusive, for, having suffered at the back of the appellants-defendants, who did not file any written statement. During the pendency of the suit, defendant No.2-subsequent vendee was proceeded ex parte.

On the basis of preponderance of evidence, the trial court decreed the suit of the plaintiff-respondents and the Appellate Court affirmed the findings in appeal.

Learned counsel for the appellants submitted that the findings recorded by both the courts below in decreeing the suit are patently illegal and the same is liable to be set aside. The learned courts below have proceeded on wholly misconceived and perverse approach, while passing the impugned judgments, which have resulted in serious miscarriage of justice, for, the respondents-plaintiffs did not assail sale deed dated 06.9.1995 for almost 10 years as the suit was filed on 14.11.2005, therefore, the suit was barred by law of limitation. Respondent-plaintiffs failed to bring on record any family settlement. Moreover the decree dated 14.9.1995 was never acted upon and the defendants continued to remain in

possession of the land. All these factors were never noticed by both the courts below, thus the findings are not sustainable in the eyes of law.

Per contra, learned counsel for the plaintiff-respondents submitted that both the courts below have decreed the suit of the plaintiff on the basis of correct appreciation of evidence. The concurrent findings of facts cannot be set aside unless and until there is gross illegality and perversity. Appellant-defendant No.1 had played a fraud upon the plaintiffs in the previous litigation and had accorded title in favour of the plaintiffs vide judgment and decree dated 14.9.1995, which remained unchallenged and that defendant No.1 could not have concealed the factum of sale deed dated 06.9.1995 having been effected in favour of defendant No.2. He, thus, prayed for dismissal of the present appeal.

After hearing learned counsel for the parties and appraising the paper book, I find no merit in the submissions of learned counsel for the appellants, for, it was an act of concealment on behalf of the appellants-defendants for having not apprised the plaintiffs of the previous litigation with regard to the said sale. Once title of the land had already been settled vide family settlement in 1993, it cannot be believed that the defendants had any right, title or interest in the land especially when the plaintiffs had been owners in possession. Besides, the defendants could have challenged the judgment and decree dated 14.9.1995 but remained silent (all the while).

Merely because name of defendant No.1 was continuing in the revenue record, he could not have transferred the land in the name of defendant No.2 without disclosure of pendency of such litigation and without permission of the civil court as has been rightly observed by the lower Appellate Court. There is no limitation for assailing the right in the

property on the basis of title.

As a sequel to the aforesaid discussion, learned counsel for the appellants could not point out any other argument to enable this Court to differ with the well reasoned findings of both the courts below much less no substantial question of law arises for adjudication.

Dismissed.

May 21, 2018
manoj

^(AMIT RAWAL)
JUDGE

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