

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

RSA No.4200 of 2016 (O&M)

Date of Decision.12.03.2018

Pushpa

.....Appellant

Vs

Hari Ram and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jangvir S. Hooda, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

C.M. No.10807-C of 2016

For the reasons stated in the application, delay of 268 days in re-filing the appeal is condoned.

Application is allowed.

RSA No.4200 of 2016

The appellant-plaintiff is in regular second appeal against the judgment and decree dated 16.01.2012 whereby the suit for declaration challenging the Relinquishment Deed dated 09.04.2001 in respect of land measuring 46 kanals 15 marlas allegedly executed by Badle, father of the plaintiff, in favour of the defendants with consequential relief of injunction has been dismissed by the trial Court as well as the judgment and decree dated 7.5.2015 whereby the appeal filed under Section 96 of the Code of Civil Procedure has also been dismissed.

The appellant-plaintiff instituted the suit on the premise that the appellant-plaintiff and pro forma defendants No.4 to 7 are daughters of Badle whereas the defendants No.1 and 2 are nephew of Badle. As the

appellant-plaintiff did not have any male sibling, therefore, defendant No.1

and 2 by playing fraud and misrepresentation upon Badle got the relinquishment deed executed and registered on 09.04.2001. Even defendant No.1 and 2 got an agreement to sell executed from defendant No.3 in respect of land measuring 27 kanals 2 marlas on 12.9.2000 which was also without consideration. A civil suit titled "Hari Ram Vs. Badle etc." seeking specific performance of agreement to sell was instituted which was hopelessly conducted suit and prayed for restraining the defendant from selling and alienating the property.

The aforementioned suit was contested by defendant Nos.1 and 2 by taking all the customary pleas qua maintainability, cause of action and valuation etc. On merits, it was averred that the relinquishment deed dated 09.04.2001 was perfect and legal document. The suit for specific performance was not based upon frivolous facts and prayed for dismissal of the suit.

Defendant Nos.3, 4, 6 and 7 filed their separate written statement on the same line except stating that in pursuance of the agreement to sell, a sum of ₹4 lacs as earnest money was paid to defendant No.3.

Since the parties were at variance, the trial Court framed the following issues:-

- "1. Whether the relinquishment deed dated 9.4.2001 and agreement to sell are illegal, null and void? OPP*
- 2. Whether plaintiff is entitled to a decree for permanent injunction as prayed for? OPP*
- 3. Whether suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Whether suit has not been properly valued for the purposes*

of court fee? OPD

5. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD

6. Whether suit of the plaintiff is time barred by limitation? OPD

7. Relief.”

In support of her case, the plaintiff examined herself as PW1 and tendered into evidence following documents:-

Ex.P1 : Jamabandi for the year 2002-03

Ex.P2 : Copy of relinquishment deed dated 9.4.2001.

On the other hand, defendants examined DW1 Rajender Singh, DW2 Anil Kumar, DW3 Ram Kishore, DW4 Khazan Singh and tendered into evidence following documents:-

Ex.DA : general power of attorney dated 12.10.2011.

Ex.D1 to Ex.D12: photographs

Ex.DW3/1 : Copy of relinquishment deed dated 9.4.2001

Ex.DA (it should be Ex.DA/1): Jamabandi for the year 1972-73

Ex.DB : Jamabandi for the year 1977-78

Ex.DC : Jamabandi for the year 1977-78

Ex.DD : Jamabandi for the year 1992-93

Ex.DE : Copy of jamabandi for the year 2002-03

Ex.DF : Copy of mutation No.1724.

On the basis of preponderance of evidence, the trial Court dismissed the suit, which has been upheld by the lower Appellate Court.

Mr. Jangvir S. Hooda, learned counsel appearing on behalf of the appellant-plaintiff submitted that a fraud, much less, misrepresentation

was played upon Badle as he could not have denied the devolvement of the property in favour of his daughter. He could not have executed the aforementioned document as property was ancestral in nature. In order to deprive the appellant-plaintiff from the ancestral property, defendant No.1 and 2 got executed a sale deed from defendant No.3 as indicated in the suit and intentionally filed the suit for specific performance of the agreement. Mutations dated 11.02.1927 and 14.02.1956 with the leave of the Court are being sought to be placed on record as Annexures A-1 and A-2 under the provisions of Order 41 Rule 27 CPC, which *ex facie*, proves the case of the plaintiff reflecting the property to be ancestral in nature at the hands of Balde. All these facts and points have not been looked into by the Courts below in correct perspective, resulting into fallaciousness and perversity, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellant and appraised the paper book. It has not surfaced on record as to when Badle died, for, as per Article 59 of the Limitation Act, the period for setting aside or cancelling an instrument or decree is three years. The aforementioned alleged execution and registration of the document is conspicuously wanting except passing reference that they acquired the knowledge only few days before filing of the suit. The evidence with regard to death of Badle would have been necessary for bringing the case within limitation. De hors of the fact that the defendant did not take plea of limitation, the objection qua limitation can always be looked into by taking the aid of provisions of Section 3 of the Limitation Act as the Court is not prevented from examining the matter from that angle.

Be that as it may, the mutations of 1927 and 1956 sought to be placed on record by way of additional evidence also do not specify that Badle had inherited the property from his fore-fathers. In the absence of the same, I am of the view that the plaintiff miserably failed to prove the ingredients of Order 6 Rule 4 CPC, much less, nature of the property to be ancestral. Ex.P1 and P-2 also do not portray nature of property being ancestral.

In view of the aforementioned, the argument of Mr. Hooda is not able to cut ice to form a different opinion than the one already arrived at by the Courts below. The judgments and decrees rendered by the Courts below are perfectly legal and justified, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 12, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No