

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA-469-2016 (O&M)

Date of decision: August 23, 2018

Sanjay Kumar

...Appellant

Versus

Hans Raj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. S.S. Dinarpur, Advocate for the appellant.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of Additional District Juedge, Yamuna Nagar on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff/appellant Sanjay Kumar filed a suit for declaration against the defendant/respondents to the effect that he alongwith his brothers Sumer Singh etc. and his father Jagdish, are owners in possession of the property as detailed in the plaint. He pleaded that he and his brother had filed a suit titled as 'Sumer Singh Vs. Jaspal Singh etc.', wherein both the parties were directed to maintain status quo regarding alienation of the suit land. However, during pendency of the said suit, defendant No.3 had sold some land, comprised in Khasra No.95//34/2, vide sale deed dated 5.2.1988 to defendant No.4, who further sold the same to defendants No.1 & 2 on 30.8.1991 despite status quo order. It was alleged that present defendants and Gurpal Kaur etc.

had tried to alienate the suit property and also raised boundary wall etc. therein. A suit was filed against all of them on 15.5.1997, in which also injunction order was passed. However, all of them had encroached upon the suit land in violation of the injunction order. It was pleaded that the sale deeds dated 15.2.1988 and 30.8.1991 are hit by principle of *lis-pendens* and are illegal, null and void documents. Suit was resisted by the defendants. Defendants No.1 and 2 in their joint written statement pleaded that plaintiff and his other brothers had filed a suit titled as 'Sumer Chand Vs. Raj Kumar and others' on 18.8.1988, challenging the sale deed dated 15.2.1988 and in that suit, claim against defendant No.4 was dismissed vide order dated 2.11.1989. No appeal was filed against the said order, rather a request was made to restore the case qua Lilawati, present defendant no.4, which was declined on 12.6.2003. Thus, said order had become final and defendant No.4 had become absolute owner of the suit land, who sold the same to the answering defendants No.1 & 2. Other averments made in the plaint were also denied. Defendant No.4 filed her written statement taking similar pleas. After hearing both the parties and perusing oral as well as documentary evidence, the trial court decreed the suit by setting-aside the sale deeds dated 15.2.1988 and 30.8.1991. It observed that despite the injunction order in the earlier suit, Lilawati had sold the land to defendants No.1 & 2 and the judgment and decree Ex.P5, passed in the said case were binding on defendants No.1 and 2. Aggrieved, defendants Hans Raj and Jagdish filed appeal. Vide judgment and decree dated 19.08.2015, Additional District Judge, Yamuna Nagar at Jagadhri has set-aside the judgment/decreed passed by

the trial court and dismissed the suit of the plaintiff/appellant. It observed that case of plaintiff was barred by limitation. As per case of the plaintiff, defendants No.1 & 2 had raised boundary wall and other construction on the land in question in the years 1997 and 2001, but he did not raise any objection to it and preferred to file civil suit in the year 2005.

I find no infirmity with the findings arrived at by the Additional District Judge. Only plea raised before this court is that judgment of the lower appellate court is based on misappreciation of evidence as well as law. I find no substance in this plea. A perusal of findings of the lower appellate court reveals that same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

(RAJAN GUPTA)
JUDGE

August 23, 2018
'Rajpal'

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