

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

RSA No.5479 of 2016 (O&M)

Date of decision:23.03.2018

Krishan

... Appellant

Vs.

Ashok Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sumit Gupta, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.14290-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 41 days in re-filing the appeal, is condoned.

C.M stands disposed of.

RSA No.5479 of 2016 (O&M)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit seeking declaration with consequential relief of permanent injunction challenging the sale deed dated 17.02.2006 executed by his brother-Ashok Kumar/defendant No.1 in respect of the shop situated in ward no.9, had been dismissed by the trial Court and upheld by the Lower Appellate Court.

The appellant-plaintiff instituted the suit aforementioned challenging the sale deed executed by defendant no.1 on the premise that the parties were co-sharers in respect of two shops situated in Wards No.9 and 3. The plaintiff has sold his property, vide sale deed dated 11.06.2001, therefore, defendant No.1 could not sell independently shop situated in ward no.9 without the consent of other co-sharers, thus, the sale deed was not valid in law.

The suit was contested by the defendants on the premise that the family settlement arrived at between the parties in the meeting of Panchayat convened on 21.01.2001, vide which shop situated in ward no.3 was allotted to the plaintiff and other shop situated in ward no.9 was allotted to defendant no.1, therefore, the plaintiff had no cause of action challenge the sale deed, *ibid*.

The trial Court on the basis of the pleadings of the parties framed the following issues:-

- “1. Whether the plaintiff is entitled to a decree for declaration with consequential relief of permanent injunction as prayed for? OPP*
- 2. Whether the plaintiff has got no locus standi and cause of action to file and maintain the present suit? OPP*
- 3. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPP*
- 4. Relief.”*

Both the parties in support of their case examined the witnesses.

Mr. Sumit Gupta, learned counsel appearing on behalf of the appellant-plaintiff submitted that family settlement was un-registered document which has not been proved on record as it has created right first time in favour of respondent-defendants. The contents of the sale deed dated 11.06.2001 had not been adverted to by both the Courts below and therefore, there is illegality and perversity in the judgments and decrees under challenge.

I have heard the learned counsel for the appellant-plaintiff and appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Sumit Gupta, for, the family settlement Ex.PW7/D had been proved on record and in fact, there is already an entry in the municipal record with regard to shop situated in ward no.9 in the name of defendants. The sale deed under challenge is of 11.06.2001. However, the suit was filed on 19.05.2007, therefore, it was barred by law of limitation. All these factors weighed in the mind of the Courts below. The submissions of Mr. Gupta, Advocate have not been able to form this Court a different opinion than the one arrived at by both the Courts below.

In view of what has been observed above, I do not find any illegality and perversity in the findings of both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 23, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No