

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

RSA No.4241 of 2015 (O&M)

Date of Decision: 16.7.2018

Balwant Singh

...Appellant

Versus

Arjun Singh and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Munish Gupta, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed the Regular Second Appeal impugning the judgments of the courts below whereby his suit has been dismissed.

The plaintiff is the son of defendant No.1-Arjun Singh. Defendant No.2- Ranjit Singh is the other son of defendant No.1.

The plaintiff filed a suit for declaration to the effect that sale deed dated 9.8.1983 executed by Santokh Singh @ Tokhi in favour of defendant No.1 regarding 07 kanals 0 marla land out of 27 kanals 19 marlas bearing Khewat No.36, Khatauni Nos.58, 59, 59/1, 39/3, Khasra Nos.27 (5-10), 98(1-10), 104(5-16), 96(3-4), 97min(2-10), 98 min(1-11), 107(7-9), 106(0-9) vide jamabandi 1978-79, situated in the area of village Raniaia is illegal and null and void. Further the exchange deed dated 24.8.2004 executed by

defendant No.1 in favour of defendant No.2 regarding 06 kanals 14 marlas

of land is illegal and null and void. Permanent injunction was also sought for restraining the defendants from interfering in the peaceful possession of the plaintiff.

It was the case of the plaintiff that he is the real son of defendant no.1. In the year 1982-83, he was working in U.A.E. He remitted money to his wife to purchase the land measuring 07 kanals 0 marlas as detailed in the head note of the plaint. Defendant no.1 took the money from the wife of the plaintiff and assured her that he would get the sale deed registered either in her name or in the name of the plaintiff. However, instead of doing so, he got the sale deed registered in his own name. The plaintiff learnt of this only when defendant No.1 executed an exchange deed regarding 6 kanals 14 marlas in favour of defendant No.2. Hence, the sale deed and exchange deed are null and void.

The defendants contested the maintainability of the suit. Their case was that the plaintiff did not enjoy cordial relation with defendant no.1. Defendant No.1 was residing with defendant No.2, his other son, who used to serve him and fulfill his daily needs. Therefore, defendant No.1 voluntarily and of his choice transferred his land measuring 9 kanals 6 marlas in favour of defendant no.2 and the latter was put in physical possession thereof.

In support of his case, the plaintiff himself appeared as PW-1. Mohinder Singh was examined as PW-2, Gurmail Singh as PW-3 and Santokh Singh @ Tokhi as PW-4. For the defendants, defendant No.1 appeared as DW-1, and defendant No.2 as DW-2.

PW-2, Mohinder Singh supported the case of the plaintiff and deposed on the line of the plaint. Gurmail Singh was examined, however, he did not turn up for cross examination, hence, his statement was not taken into consideration. PW-4 Santokh Singh deposed that the payment was made by Joginder Kaur wife of the plaintiff. He stated that the property in question was previously mortgaged with Manjit Kaur for Rs.5000/-. At the time of executing the sale deed, Joginder Kaur wife of the plaintiff handed over the mortgaged amount to Manjit Kaur and the remaining sale consideration was handed over by her to the vendor i.e. Santokh Singh. He also deposed that at that time, defendant No.1 had categorically stated that he would get the sale deed executed on the return of the plaintiff from U.A.E.

The Ld. trial court on appreciation of evidence, concluded that the plaintiff had failed to prove the fact that he had gone abroad and that he used to remit money to his wife. There was no record to establish that except for the oral evidence of the witnesses. The witnesses of the plaintiff had pleaded ignorance as to when the plaintiff had gone abroad and started remitting money to his wife. There was no evidence to show that the plaintiff was working in U.A.E. in 1982-83 and there was no record of remittance of money by him to his wife from U.A.E. Reliance could be placed on mere oral deposition of the witnesses. Even PW-2 Mohinder Singh did not deny that the plaintiff had gone abroad in the year 1995. If so, the claim that he had started remitting money to his wife in the year 1982-83 was false. Noting various contradictions in the testimony of PW-2 and PW-4, it was concluded that PW-2 was not a reliable witness.

The wife of the plaintiff who was alleged to have handed over the sale consideration to the vendor Santokh Singh as per his evidence was not examined. No reason had been given as to why the best evidence was withheld by the plaintiff. Hence adverse inference was drawn against the plaintiff to the effect that had his wife deposed, she would have to face cross examination as to whether she had paid the money or not.

PW-4 had deposed that Joginder Kaur wife of the plaintiff was present at the time of execution of the sale deed and had handed over the sale consideration directly to him. Based on this statement, the learned court concluded that the fact of execution of sale deed in the name of defendant No.1 was known to the plaintiff. There was nothing on record that after the execution of the sale deed the plaintiff ever asked defendant no.1 to get the sale deed executed in his name. Hence, the trial concluded that the cause of action accrued to the plaintiff in the year 1982-83. The suit filed in the year 2006 was filed beyond limitation. Further as the sale deed had been challenged ad valorem court fee was required to have been fixed which was not done.

Accordingly it was concluded that the plaintiff had failed to prove his case. The suit was also held to be barred by limitation. Accordingly, the suit was dismissed.

The learned lower appellate court affirmed the findings of the trial court.

Findings of fact have been recorded by the courts below. Learned counsel for the appellant has not been able to establish as to how these

findings are wrong or against the record. No substantial question of arises for decision in this case.

Accordingly, there is no merit in the appeal and the same is dismissed.

16.07 2018

(**HARINDER SINGH SIDHU**)
JUDGE

gian/sd

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No