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

**RSA-6573-2016 (O&M)
Date of decision : 30.05.2018**

Sandla Devi (since deceased) through LRs and another

... Appellant(s)

Versus

Ranjit Kumari

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Bhag Singh, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit of the respondent-plaintiff challenging the sale deeds dated 11.05.1993 and mutation dated 30.11.1993 being illegal null and void, has been allowed, in essence, the judgment and decree of the trial Court dismissing the suit, has been reversed.

The respondent-plaintiff instituted the aforementioned suit on the premise that Surjit Singh through his General Power of Attorney Avtar Singh had sold the land measuring 17 marals vide registered sale deed dated 03.07.1985. Surjit Singh suffered collusive decree dated 11.05.1993 in favour of his wife and daughter and the knowledge of the aforementioned decree was acquired in the first week of September 2005 and accordingly, the suit was filed on 30.09.2005. It was alleged that once Surjit Singh did

not have the title, he could not transfer the land in the manner and mode as indicated above. The suit aforementioned was contested by the defendant by raising the plea of limitation, estoppel and on merits, it was submitted that the sale deed was a result of fraud and misrepresentation committed by Avtar Singh attorney holder as defendant No.3-Surjit Singh never signed execution of the power attorney.

The trial Court on the basis of the preponderance of oral and documentary evidence dismissed the suit, but the lower Appellate Court being the last Court of fact and law reversed the findings of the trial Court.

Learned counsel appearing on behalf of the appellants-defendants submitted that categorical case of Surjit Singh was that he never executed power of attorney in favour of Avtar Singh. It was an act of fraud and misrepresentation as no sale consideration was passed. No explanation has come forth in not challenging the decree within a period of three years as per the provisions of Article 58 of the Limitation Act. The suit was barred by law of limitation and therefore, rightly so, the trial Court dismissed the suit, but the lower Appellate Court has abdicated in reversing the findings without noticing the aforementioned fact, thus, urges this Court for setting aside the judgment and decree of the lower Appellate Court.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Bhag Singh, for, there is no limitation for claiming right in the title. The claim can only be laid when the right is affected. The aforementioned view of mine is drawn from the *ratio decidendi* culled out by the Division Bench of this Court in **“Ibrahim @ Dharam Vir V/s**

Sharifan @ Shanti” 1979 PLJ 469.

Defendant No.3-Surjit Singh was not having any title in the suit property and without any title, he could not have suffered a decree in favour of his wife. It was, in my view, fraudulent act on behalf of Surjit Singh. No evidence has come on record as to whether any action was initiated against Avtar Singh-power attorney holder or the cancellation of the power attorney. In such type of case, the suits are filed by invoking the provisions of Article 59 of the Limitation Act.

The findings of fact and law arrived at by the lower Appellate Court, in my view, is correct appreciation of oral and documentary evidence brought on record. I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court or involvement of substantial question of law arises for determination. No ground is made out for interference. Accordingly, the present regular second appeal is dismissed.

30.05.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**