

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

RSA No.2547 of 2018 (O&M)

Date of decision:02.05.2018

Mahendro and others

... Appellants

Vs.

Daya Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Hawa Singh Hooda, Senior Advocate with
Mr. S.K.Hooda, Advocate
for the appellants.

AMIT RAWAL J.

The appellant-defendants are in Regular Second Appeal against the judgments and decrees of both the Courts below, whereby, suit of the respondent-plaintiffs for declaration, possession and mesne profit, has been decreed by the trial Court and upheld by the Lower Appellate Court.

The respondent-plaintiffs instituted the suit claiming aforementioned relief on the premise that they were owners of agricultural land comprised in khewat no.42, khata no.53 rect. & killa no.19//7/1(5-7), situated in revenue estate of village Thana Kalan, Tehsil Kharkhoda, District Panipat. The predecessors-in-interest of the plaintiffs had given the land to the predecessor in interest of defendant no.6 namely Dil Sukh son of Sukhu Lal and after the death of Dil Sukh, the property was inherited by Pale Ram being the son of Dil Sukh and after the death of Rati Ram, the

property was inherited by Vishnu Dutt, defendant no.6. Defendant no.6 without any authority or right illegally executed a lease deed dated 4.11.1959 for 99 years regarding the land in dispute in favour of Kali Ram and father of defendants No.1 to 4 and Sube Singh defendant no.5. As a result of aforementioned act, even mutation dated 25.03.1965 was sanctioned. Defendant no.6 did not have any power to execute the release deed, for, he was Dholidar as Dholi tenure was a rent free gift given by the predecessor-in-interest of the plaintiffs to the predecessor-in-interest of defendant no.6. Vishnu Dutt and his predecessor in interest have failed to perform the terms of Dholi which came to an end and as result thereof, the property was liable to be reverted back to the hands of the plaintiffs. The mutation and lease deed were illegal and void, much less not sustainable in the eyes of law.

The appellant-defendants contested the suit by taking preliminary objections regarding maintainability, jurisdiction, cause of action and limitation. On merit, ownership of the plaintiffs was denied but the factum of execution of lease deed was admitted.

Since both the parties were at variance, the trial Court framed as many as 7 issues including the issue of Relief. Both the parties examined the witnesses and brought on record the documentary evidence.

The trial Court on the basis of oral and documentary evidence decreed the suit and the appeal laid before the Lower Appellate Court was dismissed.

Mr. Hawa Singh Hooda, learned Senior counsel assisted by Mr. Mr. S.K.Hooda, Advocate for the appellants in support of the Memorandum of Appeal submitted that suit *ex facie* was barred by law of limitation. The factum of creation of lease deed was in the notice of the respondent-plaintiffs but they failed to take remedy in accordance with law till 2011 when the suit was filed. After coming into existence the provisions of Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting and Proprietary Rights Act, 2010), the plaintiffs have no right to challenge the lease deed or sale or any type of contract if any made by Vishnu Dutt or by his LRs with regard to property in dispute. Lease deed for 99 years was basically alienation, therefore, the plaintiffs were estopped to challenge the same. The revenue record qua lease deed proved the possession of appellant-defendants, whereas, the respondent-plaintiffs had been taking loan from the Bank by mortgaging the share after producing the jamabandies of joint khata land. All these factors were in their knowledge but did not take the action and therefore, the suit was not maintainable as all the acts done by defendant no.6 were hit by *doctrine akin to acquiescence*. No objection was raised by the proprietors with regard to non-providing the religious services by Dohlidar. The revenue record established that appellant-defendants were/are in peaceful possession of the land in question since 4.11.1959.

I have heard the learned counsel for the appellant-defendants, 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. Hooda, for,

the appointed date of act was 09.06.2011, whereas, act done by defendant no.6 was prior, therefore, the said act was not applicable as Dohlidar could not acquire the ownership or alienate the property in the manner and mode by executing the lease deed. Any act done by a person which is without jurisdiction, illegal and void, can be challenged at any point of time and rigour of Limitation Act would not come into way. The tenor and mode of arguments of Mr. Hooda and defence of the defendants leads to an irresistible conclusion that defendants attempted to take a plea of adverse possession but the ingredients of the same have not been proved on record. Once defendant no.6 had no right or title in the property, better rights could not have been transferred in favour of the appellants. All these factors have been looked into threadbare by both the Courts below particularly by the Lower Appellate Court being the last Court of facts and law.

No ground is made out for interference in the impugned judgments and decrees of the Courts below.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 02, 2018
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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No