

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

RSA No.3508 of 2017 (O&M)

Date of Decision.26.03.2018

Mohinder Kaur (now deceased) through LRs

.....Appellant

Vs

Avtar Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Karan Garg, Advocate
for the appellant.

Ms. Reeta Kohli, Senior Advocate with
Mr. Kirat Pal Dhaliwal, Advocate
for caveator-respondent No.2 to 5.

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AMIT RAWAL J.(ORAL)

C.M. No.8467-C of 2017

For the reasons stated in the application, delay of 19 days in
filing the appeal is condoned.

Application is allowed.

RSA No.3508 of 2017

The appellant-plaintiff is aggrieved of the dismissal of the suit
claiming declaration, permanent injunction and possession challenging the
sale deed dated 17.4.1995 alleged to have been executed on the basis of the
power of attorney executed by her in favour of defendant No.1 and the
appeal laid before the lower Appellate Court against the aforementioned
judgment and decree was also dismissed.

The appellant-plaintiff instituted the suit at the age of 72 years
on 25.09.2006 that she had 1/12th share in the land measuring 106 kanals 16
marlas and had executed a power of attorney dated 5.2.1982 for the
purposes of pursuing the litigation and not for alienation or other purposes

in favour of defendant No.1 but he misused the power of attorney and got her share of the property transferred in favour of defendant No.2 vide sale deed dated 17.4.1995. The defendant No.2 had further sold the same vide sale deed dated 15.1.2008 in favour of defendant No.3 to 5 regarding land measuring 4 kanals 2 marlas and another sale deed of even date in favour of defendant Nos.6 to 8 to the extent of 4 kanals 6 marlas. On realizing the aforementioned fact, the suit was filed, therefore, the same was not barred by limitation as per Article 59 of the Limitation Act.

Notice of motion.

Mr. Kirat Pal Dhaliwal, accepts notice for respondent Nos.2 to 5.

Mr. Karan Garg, learned counsel appearing on behalf of the appellant submitted that in support of her case, the plaintiff led the direct and cogent evidence before the Courts below but they did not appreciate those facts and non-suited the appellant-plaintiff.

Ms. Reeta Kohli, learned senior counsel assisted by Mr. Kirat Pal Dhaliwal appearing for respondent No.2 to 5 submitted that concurrent finding of facts do not call for interference, unless and until there is illegality and perversity, for, no explanation has come forth in filing the suit admittedly after almost 11 years of execution of the sale deed. The plaintiff has failed to prove that any fraud or misrepresentation was played, in essence, the ingredients of Order 6 Rule 4 CPC are conspicuously wanting, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. Both the parties have led their evidence but in my view, the appellant-plaintiff has not been able to prove direct and cogent evidence

with regard to the alleged fraud having been played upon her *vis-a-vis* her share allegedly got sold by virtue of sale deed dated 17.4.1995. No explanation has come forward in not filing the suit within the time period. The explanation given is wholly preposterous and not backed by any cogent reason. Though the power of attorney was cancelled as late as on 11.08.2003 but by that time she was not having any title or interest in the property at the time of execution of sale deeds executed in the year 1995. It was incumbent upon the plaintiff to place on record the bank account to show that the consideration of the sale deed had not been received or deposited in her bank account. All these facts weighed in the mind of the Courts below. The plaintiff is none else but the sister of the defendant seeking declaration against the brother, thus, filing of the suit is an act of aggrandizement and backing out from the act done by her.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 26, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No