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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-423-2018 (O&M)

Date of decision : 22.01.2018

Swaran Kaur @ Swarni

... Appellant(s)

Versus

Sawinder Singh (deceased through LRs) and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.D. Sharma, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-1100-C-2018

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 90 days in re-filing the appeal is condoned.

RSA-423-2018

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit seeking following relief, decreed by the trial Court, has been dismissed:-

"Suit for declaration to the effect that the plaintiff is co-sharer in joint possession to the extent of 1/6 share in land measuring 124 kanals 14 marals comprised in Khewat No.119 Khatauni No.292 Rect. 46 Killa No.4(8-0), Khatauni No.293 Rect. 41 Killa No.11(7-8), 12(7-8), 13/1(3-8), 13/2(4-0), 14(8-0), Rect. 42 Killa No.6(1-8), 17(7-11), Khatauni No.294 Rect. 42 Killa No.18/2 (5-17), 23/2 (7-0), 24(8-0), Rect. 46 Killa No.3(8-0),

8/11 (5-0), Khatauni No.295 Rect. No.42, Killa No.6/2 (2-0), Khatauni No.296 Rect. 42 Killa No.6/1 (3-8), 7/2 (1-10), 14(8-0), 15(8-0), 16(7-11), 25/2(2-11), Khatauni No.297 Rect. No.42 Killa No.22/2 (4-0, 23/1(1-0) situated in the revenue estate of Village Pangrain H.B. No.154, Tehsil Batala District Gurdaspur vide jamabandi for the year 2004-05 and revenue entries in the jambandies for the year 1984-85 and 2004-05 showing only defendant Nos.1 to 4 as co-sharers are illegal, null and void and are liable to be corrected and the alleged sale deed dated 18.08.1987 allegedly executed by the plaintiff is illegal result of fraud and does not confer any right or title in favour of defendant Nos.1 to 3, with consequential relief of permanent injunction restraining the defendants from alienating the suit land more than their actual share.”

Learned counsel appearing on behalf of the appellant-plaintiff submits that the plaintiff Swaran Kaur @ Swarni daughter of Kartar Singh and the defendants/respondents are the brothers and sisters. On demise of Kartar Singh, who died intestate, the property was mutated in their name, but on realizing that the respondents-defendants i.e. brothers by playing mischief got mutation of the land qua her and her sister's share i.e. Palo in their name, the suit seeking aforementioned was filed. The defendants in the suit came out with a defence of the execution of the registered sale deed dated 18.08.1987 executed by both the sisters in favour of their brothers i.e. defendant Nos.1 & 2 (since deceased represented by LRs) & defendant No.3 and have been non-suited on the ground of having not assailed the sale deed within a period of three years by taking the aid of the provisions of Article 59 of the Limitation Act. In fact, jamabandis would show the jointness of the property. The alleged sale deed did not actually have the thumb-impressions of the plaintiff and her sister Palo. In this

regard, the handwriting expert was examined, who has submitted his report Ex.PW-1/1 stating that the thumb-impressions were not of Swaran Kaur. The fraud had been played upon the appellant-plaintiff with regard to the sale deed and the limitation would commence from the date of knowledge and not from the date of the execution of the sale deed and therefore, the suit could not have been dismissed being barred by law of limitation. All the parties to the litigation were Class-I heirs of Kartar Singh and therefore, they have 1/6th right in the property left by him. The trial Court on preponderance of evidence realizing that the witnesses of the sale deed have not been examined, but the relatives of the executant, much less, they could not suffice the requirement of Section 68 of the Indian Evidence Act, decreed the suit, but the lower Appellate Court has committed illegality and perversity. The plaintiff denied the execution of the sale deed dated 18.08.1987 and Palo/defendant No.4 also did not appear to prove the execution of the sale deed, therefore, adverse inference is liable to be drawn against the respondents-defendants. The plaintiff had never appended her thumb impressions and she only used to append her signatures as she remained Sarpanch of the Village, thus, urges this Court for formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma, for, any registered document carries a presumption of truth until and unless the same is set aside on the grounds stated therein. Even Article 59 of the Limitation Act enables the party to cancel or set aside an instrument or decree having first become known to him. In the plaint, the plaintiff had given a reference to the sale deed and

therefore, adverse inference had been drawn by the lower Appellate Court against her. She had the knowledge of the sale deed, but did not challenge the same, therefore, the rigors of the Article 59 of the Limitation Act have been pressed into service. Had it been otherwise, the sale deed set up for the first time by the defendants, the plaintiff would have definitely replied in the application and led the evidence in rebuttal after the defendants had discharged the onus. The relatives of the attesting witnesses have deposed and identified the signatures of the witnesses. The defendants have also examined DW-3 Tavinder Singh, who knew the actual deed writer and saw him, drafting the sale deed. The plaintiff being a Sarpanch of the lady cannot be permitted to take a plea of ignorance of law or feign ignorance of the sale deed. Such a person knowing the intricacies of the revenue record would not, without understanding its content, append the thumb impressions on the same. The report of the handwriting expert is neither here nor there. No documentary evidence has been placed on record that she had never appended the signatures in any other proceedings except the report *ibid*. It is a common practice that the handwriting expert toe to the line of the party, who engages him. If at all, the plaintiff was very sure about having not thumb marked the sale deed, she could have summoned defendant No.4/Palo Devi as her own witness, therefore, adverse inference drawn as per Section 114-g of the Indian Evidence Act is correct application of mind and law. The lady being Head of the Village cannot be a mute-spectator, once she acquired the knowledge of fraud having been played upon her. No efforts have been made to lodge an FIR or complaint to the competent authority, perhaps had some fear of being not tried to commit a offence under Section 182 Cr.P.C. Be that as it may, the fact of the matter is that the

lower Appellate Court being the last Court of fact and law examined the evidence, both oral and documentary threadbare and found that the judgment and decree of the trial Court was based upon the surmises and conjecture and not on the material on record.

For the foregoing reasons, I do not intend to the judgment and decree rendered by the lower Appellate Court being the last Court of fact and law, which is based upon the preponderance of oral and documentary evidence, much less, no substantial question of law arises for determination.

Resultantly, the appeal is dismissed.

22.01.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No