

In the High Court of Punjab and Haryana at Chandigarh

RSA-6194 of 2017(O&M)
Date of Decision:23.5.2018

Purshotam Kaur

---Appellant

vs.

Attar Singh through Lrs and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Abhivadya Sood, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction and declaration filed by the respondent/plaintiff Attar Singh (since deceased) now represented by his legal representatives (LR's) was decreed by the trial court vide judgment and decree dated 31.8.2015 and appeal preferred by appellant Purshotam Kaur did not find favour with the Additional District Judge, Fatehgarh Sahib, thus, findings recorded by the trial court were affirmed without any variance.

Attar Singh has claimed himself to be owner in possession of suit property described at letters "X" and "Y" being bona fide purchaser for valuable consideration vide sale deed dated 20.6.1983 executed by Nand Singh son of Mangal Singh and dated 24.2.1987 by legal heirs of Mukand

Singh. Sale deed No. 310 dated 4.5.1983 executed by defendant No. 3 in favour of defendant No. 1 Purshotam Kaur (appellant herein) is illegal, null and void, ineffective and result of collusion and connivance between defendants No. 1 and 3 just to create false evidence. He has prayed for permanent injunction restraining Municipal Council, Sirhind defendant No. 2 not to change name of the plaintiff as owner of suit property in the municipal records and also restraining defendant No. 1/appellant from interfering into peaceful and physical possession of the plaintiff over suit property.

Counsel for the appellant would urge that the suit property was purchased by Mukand Singh son of Mangal Singh vide sale deed dated 27.5.1955 (Ex. D7). Mukund Singh executed Will dated 31.7.1981 in favour of his sister's daughter namely Sukhdev Kaur and on the basis of Will, Sukhdev Kaur sold suit property to appellant Purshotam Kaur vide sale deed dated 4.5.1983 (Ex. D3). It is argued with vehemence that as the sale deed dated 27.5.1955 is more than 30 years old document and has been produced from proper custody, presumption of correctness is available to the document under Section 90 of the Indian Evidence Act, 1872 (in short "the Evidence Act") that says, quoted thus:-

“where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document

executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.”

Another submission made by counsel is that Attar Singh has challenged Will dated 31.7.1981 by filing the instant suit in the year 2008. He is claiming rights in the suit property on the basis of sale deed dated 20.6.1983 executed by Nand Singh and 24.2.1987 by Chamkaur Singh etc., successors-in-interest of Mukand Singh. It is argued that dispute with regard to Will in question between Sukhdev Kaur defendant No. 3 and Chamkaur Singh etc. remained pending before the revenue authorities qua sanction of mutation in respect of agriculture land owned by Mukand Singh and the same was decided by the Assistant Collector Ist Grade, Nabha vide order dated 17.12.1982 (Ex. D2). It is argued that as the respondent/plaintiff has claimed ownership of half share in suit land on the basis of sale deed executed by Chamkaur Singh etc. in the year 1987, it is to be construed in law that Attar Singh had knowledge of the Will in question since 1981/1982, therefore, the present suit instituted in the year 2008 to assail the Will in question is clearly barred by limitation.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned and the records.

The trial court, on the basis of pleadings of the parties, framed the following issues:-

1. Whether the plaintiff is entitled to declaration to the effect that he is owner in possession of the suit property being bona fide purchaser for valid consideration?OPP
2. If issue No. 1 is proved in affirmative, whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
3. Whether Mukand Singh executed his last and valid Will on 31.7.1981 in favour of defendant No. 3 with regard to his movable and immovable property including the suit property? OPD3
4. If issue No. 3 is proved in affirmative, whether defendant No. 1 is the owner in possession of the suit property on the basis of sale deed dated 4.5.1983 executed by defendant No. 3?OPD
5. Whether the suit is not maintainable in the present form?OPD
6. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD
7. Relief.

The respondent-plaintiff examined Harpreet Singh PW5 and he tendered into evidence his affidavit Ex.PW5/A by way of examination in chief. In his testimony, certified copy of sale deed bearing wasika No. 263 dated 27.5.1955 was marked as Ex. P3. He also produced and marked sale

deed bearing wasika No. 1306 dated 20.6.1983 Ex. P4 and sale deed No. 4632 dated 24.1.1987 Ex. P6. Sukhdev Kaur, defendant No. 3 produced on record the original sale deed dated 27.5.1955 (Ex. D7).

The Court, on due consideration of the document Ex. P3 (certified copy of sale deed dated 27.5.1955) and the original sale deed bearing wasika No. 263 dated 27.5.1955 has held that there is tampering in the original sale deed (Ex. D7) wherein it is written 'urf Mukandi'. The document was marred due to some fluid and the word 'urf' is also in different ink. It has further been noticed that there is no pleadings or evidence that Mukand Singh was also known as Mukandi and no explanation as to why there is no mention of Mukandi in extract Ex.P3. No suggestion was put to Rajinder Singh PW7 with regard to insertion of word “urf Mukandi”.

I have carefully examined the document Ex. P3, certified copy of sale deed in question issued by the office of Sub Registrar concerned and admissible in evidence being a public document and the original sale deed dated 27.5.1995 marked as Ex. D7 and do not find any reason to differ with findings of the Courts that original sale deed Ex. D7 has been tampered with, as has been noticed by the Courts.,

Perusal of Ex. P3 would show that the sale deed of 1955 was in favour of Nand Singh and Mukand Singh sons of Mangal Singh. In the document Ex. P3 and D7 at various places the word used is 'mushtriyan' (vendees). In Ex. P3 with regard to signatures of Mukand Singh, there is reference to mushtri (vendee). The very fact that Ex. D3 makes reference to Mukand Singh and Nand Singh as well as mushtriyan (vendees), it is

apparently evident that suit property was sold by its erstwhile owner to Mukand Singh and Nand Singh sons of Mangal Singh but later, taking advantage of the original sale deed being in custody of appellant, the same has been tampered with by adding word 'urf' and converted Nand Singh to

Mukandi. The word 'ਉਰਫ਼' has been inserted

between the words 'Singh' (in

v e r n a c u l a r) a n d 'ਸ਼.'. F r o m

spacing in between the words of the

sale deed, there is no escape from

c o n c l u s i o n t h a t t h e w o r d 'ਉਰਫ਼'

been added later in a different ink, therefore, the appellant cannot derive

advantage to her contention by invoking Section 90 of the Evidence Act.

In this view of the matter, plea of the appellant that Nand Singh was not

competent to alienate half of the suit property is not tenable. The trial court

framed a specific issue with regard to Will dated 31.7.1981 of which the

onus was placed upon Sukhdev Kaur, defendant No. 3 through whom the

appellant is claiming rights in the suit property. No evidence was adduced

to prove the Will in compliance of the relevant provisions of Section 68/69

of the Evidence Act, therefore, she otherwise cannot claim right in the suit

property on the basis of Will and sale deed propounded by her.

This brings the Court to question of limitation raised by

counsel for the appellant for the first time in the second appeal. Perusal of

the plaint would reveal that in para 6 thereof, it is stated that cause of action

arose to the plaintiff in the present suit for injunction a day before yesterday

when the defendants threatened to do the illegal act and as such the suit is

within limitation.

In the written statement filed by the appellant, in reply to para 6, it has been averred that no such alleged cause of action ever arose to the plaintiff to file the suit. The plaintiff has got no right, authority, locus standi or cause of action to file the present suit.

Sukhdev Kaur, defendant No. 3 filed her separate written statement. In reply to para 6, she had stated that plaintiff has no cause of action to file the suit as he has no concern or connection with the suit property.

The trial court did not frame an issue on the question of limitation, may be, no such question of limitation was raised by the defendants in the written statements. This court is not oblivious of the fact that even if no plea qua limitation has been raised by way of defence, it is for the court to examine if the suit is within limitation or otherwise. Equally settled is that the plaint can be rejected if on the basis of averments made in the plaint, the court finds that the suit is barred by limitation, therefore, barred by law.

Perusal of judgment of trial court would reveal that no such question of limitation was raised even at the time of hearing of arguments after conclusion of evidence by the parties. On a pointed query raised by the court, counsel has fairly informed that even in the grounds of appeal before the first Appellate Court, no such question of limitation was raised. Similarly, during course of hearing of appeal, no issue with regard to suit being barred by limitation was raised by the appellant. Since the question of limitation would be a disputed question of fact and law, same cannot be

allowed to be raised for the first time in regular second appeal. In this view of the matter, the appellant cannot seek reversal of judgments passed by the Courts by raising a question of limitation for the first time before this Court.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

23.5.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No