

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

**C.M. No.6667-C of 2018 and
RSA No.6337 of 2017
Date of Decision.03.05.2018**

Jagdish (since deceased) through his LRs ...Appellant

Vs

Smt. Dharmo and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

C.M. No.6667-C of 2018

For the reasons stated in the application, order passed by this Court on 24.04.2018 is recalled and the appeal is restored to its original number.

Application is allowed.

C.M. No.16481-C of 2017

The application for impleading the legal representatives of appellant-Jagdish is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.16482-C of 2017

For the reasons stated in the application, delay of 150 days in filing the appeal is condoned.

Application is allowed.

RSA No.6337 of 2017

The present regular second appeal is directed against the concurrent finding of fact whereby the suit of the appellant-plaintiff seeking declaration challenging the sale deed dated 7.8.1984, mutation dated

18.3.1988, mutation dated 30.12.2004, release deed dated 8.6.2005, mutation dated 16.05.2006 with consequential relief of permanent injunction has been dismissed by the trial Court and affirmed by the lower Appellate Court.

The appellant-plaintiff instituted the aforementioned suit challenging the sale deeds and release deed, much less, mutations effected in the year 2004 and 2006 on the premise that he was not owner of the suit property which was sold to Ishwar Singh, therefore, no interest, right and title was passed in favour of the legal representatives of Ishwar Singh.

The aforementioned suit was contested by defendant No.1 to 10 by filing written statement regarding maintainability. On merit, it was stated that the plaintiff had sold the suit property vide aforementioned sale deeds for a valuable consideration. The suit was barred by law of limitation and not maintainable as no ingredients of fraud were pleaded. It was further pleaded that the suit property had been sold to defendant No.11 vide sale deed dated 10.03.2008 for a valuable consideration.

Defendant No.11 filed the written statement and acknowledged the purchase of the property vide sale deed dated 10.03.2008.

Since both the parties were at variance, the trial Court framed as many as 12 issues including the issue of relief.

The appellant-plaintiff in support of averments made in the plaint examined himself as PW1 and tendered as many as seven documents. On the other hand, defendants examined as many as twelve witnesses.

On the preponderance of evidence, the trial Court dismissed the suit on the ground that the appellant-plaintiff has not been able to prove how he was not the owner of the property allegedly sold to Ishwar Singh, much less, the suit was also barred by limitation. In appeal, the lower Appellate

Court affirmed the finding of the trial Court.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellant-plaintiff submitted that the mutation in the suit property was kept close to the heart and came to the knowledge of the plaintiff only in 2005, resulting into filing of the suit in the year 2009. There is no limitation for claiming title and rightly so, the suit aforementioned was filed. There was a fraud having been played upon the plaintiff, thus, urges this Court for setting aside the finding under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Goel. The plaint is bereft of any whisper under Order 6 Rule 4 CPC alleging fraud and misrepresentation. The suit simplicitor claiming declaration challenging the execution of the sale deed was not maintainable. The appellant-plaintiff had not been able to prove as to how and in what manner he came aware of the aforementioned sale deeds. A registered document carries presumption of truth. No explanation has come forward for delay in filing the suit, for, owing to Article 59 of the Limitation Act, the limitation for filing the suit is three years from the date of registered document. The release deed is of the year 2005 and the sale deed is of 1984 whereas the suit had been filed in the year 2009.

In view of the aforementioned, the findings arrived at by both the Courts below do not call for interference, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 03, 2018
Pankaj*