

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

**RSA No.976 of 2017 (O&M)
Date of Decision.31.10.2018**

Charan Kaur (deceased through LRs)

....Appellant

Vs

Bhago alias Ranjit Kaur and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajaivir Singh, Advocate
for the appellant.

-.-

AMIT RAWAL J. (ORAL)

C.M. No.2189-C of 2017

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

C.M. No.2190-C of 2017

For the reasons stated in the application, delay of 578 days in re-filing the appeal is condoned.

Application is allowed.

RSA No.976 of 2017

The regular second appeal is directed at the instance of the appellant-plaintiff against the concurrent finding of fact whereby the plaintiff has not been able to succeed in claiming relief of declaration to be exclusive owner of land measuring 13 kanals on the premise that she was exclusive owner of the land cultivated from other persons. Defendant No.1 reposed confidence in her and wanted to obtained thumb impression on certain papers. When she refused to do so, extended threats of alienation. In this regard, when the plaintiff

approached the revenue officials, came to know that name of defendant No.1 was recorded as owner to the extent of 1/4th share along with Swaran Kaur wife of Naranjan Singh to the extent of 1/6th share. On further probe, it was found that Bhago had transferred half of the land belonging to the plaintiff on the basis of sale deed dated 27.06.1975 and gift deed dated 13.11.1975. No consideration of amount was received by the plaintiff nor she ever appeared before the office of Sub Registrar.

Defendant No.1 supported the sale deed and raised objections qua maintainability of the suit being barred by law of limitation and submitted that both documents were registered, thus, carried presumption of truth. There was no coercion or pressure but in fact the plaintiff in her sound disposing mind executed the aforementioned documents by appearing before the Registrar.

Defendants No.2 to 4 opposed the suit claiming owner on the basis of the registered document.

On the preponderance of evidence, the trial Court dismissed the suit and the appeal laid before the lower Appellate Court was also dismissed.

Mr. Ajaivir Singh, learned counsel appearing on behalf of the appellant submitted that the respondents failed to prove the sale deed and the gift deed executed by the plaintiff and in such circumstances, the suit was liable to be decreed. Charan Kaur during the pendency of the suit died and Yashpal was impleaded as legal representative, for, she had executed the Will. Presumption should not have been drawn by treating the document as 30 years old. There is no

limitation where the declaration is sought on the basis of title.

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 submissions of Mr. Ajaivir Singh. Concurrent finding of fact does not call for interference unless and until there is some perversity. Plaintiff miserably failed to discharge onus. On the other hand, defendants proved on record sale deed dated 27.6.1975 Ex.D1, Gift Deed dated 13.11.1975 Ex.D2, mortgage deed Ex.D3, much less, payment of sale consideration. Bhago has passed some part of the property to other defendants, which has also been proved through direct and cogent evidence.

The suit cannot be filed by bringing under the ambit of Article 59 of the Limitation Act as during all this period, plaintiff had the knowledge and rightly so, it has to be treated under Article 58 of the Limitation Act. It has become common practice amongst the litigants to create cause of action for the purpose of bringing the suit within the limitation but the said act becomes evident on the touchstone of pleadings as well as evidence brought on record during the trial.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 31, 2018
Pankaj*

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No