In the High Court of Punjab and Haryana at Chandigarh

RSA-741 of 2018(O&M)
Date of Decision:22.10.2018

Jaswant Singh

---Appellant

vs.

Naranjan Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R.S.Bains, Advocate
for the appellant

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Rekha Mittal, J.

The present appeal directs challenge against judgments and decrees passed by the Courts whereby suit for declaration and permanent injunction filed by the appellant-plaintiff in respect of suit property, detailed in head note of the plaint, has been dismissed.

The appellant-plaintiff has challenged sale deed No. 2947 dated 5.3.1999 purported to be executed by him regarding half share in favour of the respondent-defendant. It is averred that appellant purchased the suit land vide registered sale deed No. 1085 dated 3.7.1996. The respondent-defendant is his brother in law and upon his request the defendant was shown as purchaser to the extent of half share but appellant had paid the entire sale consideration. When the appellant asked the respondent to give him sale consideration regarding his share, respondent relinquished his share in favour of appellant and assured that he will execute sale deed of half share in his (appellant's) favour. The appellant raised construction in the suit land and started living there. The respondent-defendant got prepared false sale deed No. 2947 dated 5.3.1999 but the same is the result of misrepresentation. The sale deed is of a very meager value. Mutation No. 14640 was sanctioned in favour of the respondent on the basis of sale deed dated 5.3.1999. He has prayed that the sale deed dated 5.3.1999 and mutation No. 14640 are liable to be set aside.

The respondent-defendant filed the written statement and raised preliminary objections inter alia that the suit is barred by principle of res judicata and limitation. The suit property was purchased vide sale deed dated 3.7.1996 in equal shares by the plaintiff and defendant but later plaintiff sold his share in favour of defendant vide sale deed dated 5.3.1999. Since defendant is non-resident Indian, appellant took advantage of his absence and occupied the house in question. Previously, plaintiff filed another suit against the defendant claiming himself to be owner of the suit land and sought injunction which was dismissed. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The defendant filed counter claim for mandatory injunction seeking possession of suit property but the same was withdrawn with liberty to file suit for possession.

The plaintiff filed replication, wherein he re-asserted his stand taken in the plaint and denied contentions of the written statement.

The controversy between the parties led to framing of following issues by the learned trial court:-

1. Whether plaintiff is entitled for declaration as prayed for ? OPP

2. Whether plaintiff is entitled for permanent injunction as prayed for? OPD
3. Whether the suit is within limitation? OPP
4. Whether the suit is barred by principle of Res-Judicata? OPD
5. Whether the plaintiff has concealed true facts from the Court? OPD
6. Whether the plaintiff is barred by his own act and conduct from filing the present suit? OPD

   6(A) Whether the defendant counter claimant is entitled for mandatory injunction as prayed for.

   6(B) Whether defendant/counter claimant is entitled to the recovery of damages for illegal use and occupation of the premises, if so what would be quantum? OPD

   7.Relief"

To prove his case, Jaswant Singh appellant-plaintiff appeared in the witness box and examined Bachint Singh PW2, Randeep Kumar, Registry Clerk, PW3, Tarsem Chand LDC PW4, Manish Kumar Assistant Manager PW5, V.B.Bhatnagar, Handwriting and Finger Prints Expert PW6, Jagrup Singh official from Electricity Board PW7 and Subash Kumar Junior Assistant PW8.

To rebut evidence of the plaintiff, respondent-defendant tendered into evidence certain documents and thereafter evidence was closed by order.

The learned trial court answered issues No. 1 to 3 against the appellant-plaintiff and as a consequence, suit was ordered to be dismissed.

The appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge, Mansa.

The courts have consistently held that suit filed by the appellant-plaintiff in December 2007 to challenge sale deed No. 2947 dated 5.3.1999 is clearly barred by limitation. To assail findings of the courts in regard to issue No. 3, it has been argued that previous suit for injunction was instituted in March 2001 and the same was decided on 16.11.2007 vide judgment Annexure A-9 appended with CM No. 6559-C of 2018. Counsel would argue that period during which the previous suit remained pending, is liable to be excluded for the purpose of computing limitation, therefore, the present suit filed just one month after decision of the earlier suit cannot be said to be barred by limitation. In support of his contention, he has relied upon judgment of this Court **Madan Lal and another vs. Rajesh Kumar (Deceased) and others 2005 (4) RCR (Civil) 72.** Reference has also been made to judgment of Hon'ble the Supreme Court **Mohinder Singh (Dead) through L.Rs. vs. Paramjit Singh and others** Civil Appeal No. 10222 of 2017 (Arising out of SLP (C) No. 24862 of 2012) decided on 28.3.2018 in order to contend that the period during which the previous suit remained pending is liable to be excluded for computing limitation under Section 14 of the Limitation Act, 1963 (in short "the Act").

Another submission made by counsel is that as the appellant challenged sale deed dated 5.3.1999 being the result of misrepresentation and fraud, there is no limitation for challenging the transaction vitiated by fraud. In support of his contention, he has referred to Division Bench judgment of this Court **Gram Panchayat, Sahaura vs. State of Punjab**

and others 2016(4) RCR (Civil) 674 wherein this court in para 9 has held to the following effect:-

> “There is no gainsaying in reminding that 'fraud' and 'collusion' vitiates even a lawful action and if proved, the technicalities like delay, limitation or failure to avail opportunities become inconsequential.”

It has further been argued that though in the written statement filed by the respondent-defendant in the previous suit for injunction, there is reference to sale deed dated 5.3.1999 both in the preliminary objections as well as reply on merits but particulars of the sale deed have not been given and the same were revealed for the first time in the year 2006 when Niranjan Singh respondent-defendant tendered his affidavit Ex. DW1/A by way of examination in chief on 21.8.2006, therefore, the appellant gained knowledge of sale deed dated 5.3.1999 in August 2006, thus, the present suit filed in 2007 from the date of knowledge cannot be said to be barred by limitation.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned and the documents sought to be placed on record by filing miscellaneous application either by invoking Section 151 of the Code of Civil Procedure (in short “the Code”) or Order 41 Rule 27 read with Section 151 of the Code.

Indisputably, the appellant-plaintiff filed a suit for injunction in March 2001 restraining the respondent-defendant to take possession of suit house forcibly and dispossessing him that culminated in the judgment and decree dated 16.11.2007 whereby suit for permanent injunction was dismissed on the ground that no injunction can be issued against the true owner/co-sharer. However, the court has accepted plea of the appellant-plaintiff that he is in possession of suit property.

The question for consideration is whether the appellant can invoke Section 14 of the Act or can be heard to say that the period during which the previous suit for injunction remained pending is liable to be excluded for computing limitation to file the suit for declaration challenging sale deed dated 5.3.1999.

Section 14 of the Act, excludes time of proceeding bona fide in court without jurisdiction or other cause of a like nature because of which the court is unable to entertain another civil proceedings that the plaintiff had been prosecuting with due diligence.

In the case at hand, previously the appellant filed a simpliciter suit for injunction restraining the respondent-defendant from dispossessing or interfering in his possession of suit house. Counsel has failed to point out that the court that decided the previous suit was not competent to entertain the same either from defect of jurisdiction or other cause of a like nature. In this view of the matter, contention raised by counsel seeking exclusion of time by invoking Section 14 of the Act is patently misconceived and rejected. That being so, appellant cannot derive any advantage to his contention from the judgments in **Mohinder Singh (Dead) through L.Rs' case (supra)** and **Madan Lal and another's case (supra).**

Indisputably, in the previous litigation between the parties, the respondent-defendant denied title of the plaintiff qua suit house on the basis of sale deed executed in the year 1996 on the basis whereof the plaintiff and defendant became co-owners of suit land to the extent of half share each. He further pleaded that the appellant had sold his share to the respondent vide sale deed dated 5.3.1999. Counsel for the appellant has sought to contend that as the appellant has challenged sale deed dated 5.3.1999 being the result of misrepresentation or fraud, there is no limitation for challenging the same. This contention would have been of consequence had the factum of sale been not to his knowledge three years prior to institution of the suit or the same had come to his knowledge within three years before institution of the suit. Once the factum of sale on 5.3.1999 came to notice of the appellant in view of written statement filed by the respondent in January 2002, he cannot be heard to say that limitation would start to run from the date particulars of sale deed were brought to his knowledge by way of affidavit Ex. DW1/A filed by the defendant-respondent in chief examination, in the previous suit.

Section 17 of the Act deals with effect of fraud or mistake. A relevant extract therefrom reads as follows:-

> " 17. **Effect of fraud or mistake.**—
>
> (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—
>
> (a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or
>
> (b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or
>
> (c) the suit or application is for relief from the consequences of a mistake; or
>
> (d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently

concealed from him:

the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

xxx xxx xxx

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

xxx xxx xxx."

Perusal of the aforesaid extract makes it evident that where the suit in based upon fraud of the defendant, the period of limitation shall not begin to run until plaintiff has discovered the fraud or could with reasonable diligence have discovered it. There is nothing on record suggestive of the fact as to what efforts were made by the plaintiff/appellant to discover the fraud even despite the respondent-defendant having disclosed that the appellant has sold his half share to the defendant on 5.3.1999. It is difficult to believe that if a person has learnt that the other party is setting up a sale by him of suit property but actually he had not executed the sale deed, as a prudent person he would make all possible inquiries to get necessary information. In the given scenario, the appellant cannot be heard to say that either limitation to file the suit would start from August 2006 when the defendant had tendered his affidavit by way of examination in chief in the earlier suit or there is no limitation for filing the suit as the sale is vitiated by fraud. In view of the above, the appellant can neither derive any advantage to his contention from the provisions of Section 14 nor Section 17 of the Act to contend that consistent findings recorded by the courts rejecting claim of the appellant on the ground of limitation suffer from an error much less perversity. As a natural corollary, findings of the courts on the question of limitation (issue No. 3) are liable to be affirmed and ordered accordingly. As the suit filed by the appellant-plaintiff is barred by limitation, this court need not to dilate on merits of the case

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. All miscellaneous applications filed by the appellant-plaintiff would be deemed to be disposed of.

(Rekha Mittal)
Judge

22.10.2018
paramjit

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