

RSA-2960-1988 (O&M)

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

RSA-2960-1988 (O&M)

Date of decision : 11.04.2019

Pritam Singh @ Pritam Chand

... Appellant

Versus

Roop Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sukant Gupta, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL, J. (ORAL)

The present regular second appeal, at the instance of the plaintiff, is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the appellant-plaintiff for possession by way of pre-emption, though decreed by the trial Court, has been dismissed, being barred by law of limitation.

The facts which emanate from the pleadings of the parties are that the plaintiff, on 07.10.1980, filed the suit for possession by way of pre-emption of 1/7th share claiming himself to be tenant, by depositing 1/5th amount, by impugning the sale deed dated 10.04.1980 (Ex.P1), executed by defendant No.1 in favour of defendant No.2.

Defendant Nos.1 & 2, did not appear and accordingly, proceeded *ex parte*. However, in the year 1982 i.e. on 22.04.1982, an

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application for impleadment of Sawaran, Gurcharan and Avtar Singh, all minor sons of Gurdev Singh, as defendant Nos.3 to 5, respectively, was filed, on the premise that they stated to have acquired the interest, in the suit property, by virtue of sale deed dated 17.09.1980 executed by defendant No.2. The application was, vide order dated 14.06.1982, allowed by the trial Court.

The defendant Nos.3 to 5 opposed the suit by raising all possible objections and denied the status of the plaintiff as a tenant. It was averred that they were *bona fide* purchasers for a valuable consideration. However, in the year 1987, submitted an application for amendment of the written statement to incorporate the preliminary objection qua the suit being time barred, which was allowed, vide order dated 14.12.1987, rendering observation that the objection will be discussed in the relief clause.

Both the parties led extensive evidence in support of their respective cases.

The plaintiff in support of the pleadings also brought on record the order of the Courts below as well as upheld upto this Court, wherein his status as a tenant was upheld.

By negating the plea of limitation, the suit in toto was decreed. However, in appeal, both the parties confined their arguments to the limitation, but did not lay the challenge to the findings on other issues i.e. status of the plaintiff as tenant.

Mr. Sukant Gupta, learned counsel appearing on behalf of the appellant-plaintiff submitted that as per the provisions of Section 30 of the Punjab Pre-emption Act, the limitation is one year. The suit was filed on 07.10.1980, pre-empting the sale deed dated 11.04.1980, but the factum of

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the sale deed executed by defendant No.2, acquired on receipt of the notice, as per the contents of the application, remained uncontroverted. Even otherwise, challenge to the sale deed 17.09.1980 cannot be said to be barred by law of limitation. Proviso to Section 21 of the Limitation Act also protects the interest of the plaintiff.

As per office report, guardian of respondent Nos.3 to 5, being contesting respondents, is stated to have died.

Be that as it may, since the findings of the lower Appellate Court, according to *prima facie*, does not appear to be correct and the parties to the *lis* have been prevented the right of first appeal, I deem it appropriate to remit the matter to the lower Appellate Court.

It would be apt to reproduce to the provisions of Section 30 of the Punjab Pre-emption Act, 1913 as well as Section 21 of the Limitation Act:-

"30. Limitation.- *In any case not provided for by article 10 of the Second Schedule of the the period of limitation in a suit to enforce a right of pre-emption under the provisions of this Act shall, notwithstanding anything in article 120 of the said schedule, be one year-*

(1) in case of a sale of agricultural land or of village immovable property, from the date of the attestation (if any) of the sale by a Revenue Officer having jurisdiction in the register of mutations maintained under the Punjab Land Revenue Act, 1887 or from the date on which the vendee takes under the sale physical possession of any part of such land or property: whichever date shall be the earlier;

(2) in the case of a foreclosure of the right to redeem village immovable property or urban immovable property, from the

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date on which the title of the mortgage to the property becomes absolute;

(3) in the case of a sale of urban immovable property, from the date on which the vendee takes under the sale physical possession of any part of the property.

Section 21 in The Limitation Act, 1963

21. Effect of substituting or adding new plaintiff or defendant.

—(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party\:" Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."

The dates given are not in dispute. The suit was filed on 07.10.1980, whereas the sale deed in favour of defendant Nos.3 to 5, is of 17.09.1980 i.e. a month before the filing of the suit. In any case, the period of limitation for filing the suit is one year as the plaintiff had no knowledge about the exchange of the property by defendant No.2 in favour of defendant Nos.3 to 5. Even the contents of the application of acquisition of knowledge, remained uncontroverted.

Keeping in view the aforementioned facts, the judgment and decree of the lower Appellate Court is set aside and the matter is remitted to

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the lower Appellate Court to decide the same afresh, after effecting the service upon defendant Nos.3 to 5, in their individual capacity, as they must have acquired the age of majority, in accordance with law as respondent/defendant Nos.1 and 2, already proceeded *ex parte*.

This Court is sanguine of the fact that the lower Appellate Court shall decide the appeal as early as possible preferably within a period of ten months from the date of receipt of the certified copy of this order.

The parties or through their counsel are directed to appear before the lower Appellate Court on 15.05.2019.

Original records be sent back.

With the aforesaid observations, the present second appeal stands disposed of.

11.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**