

In the High Court of Punjab and Haryana at Chandigarh

RSA- 1840 of 2019(O&M)
Date of Decision:8.4.2019

Harbhajan Singh (since deceased) through LR and another

---Appellants

vs.

Atma Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.M.S.Saini, Advocate
for the appellants

Rekha Mittal, J.

CM No. 4849-C of 2019

Prayer in this application is for condoning delay of 10 days in
filing the appeal.

Heard.

Allowed as prayed for. Delay of 10 days in filing the appeal
stands condoned.

Disposed of accordingly.

Main case

Challenge in the present appeal has been directed against
concurrent findings recorded by the Courts whereby suit for declaration and
in alternative for possession filed by the respondents-plaintiffs was partly

decreed by the trial court to the effect that plaintiffs are owners of suit property to the extent of 6 kanal and sale deed dated 11.11.1987 in favour of defendants (appellants herein) is valid to the extent of 4 kanal 6 marlas and not 8 kanal and plaintiffs are entitle to joint possession over the suit property to the extent of their share i.e. 6 kanal. Judgment and decree passed by the trial court came to be affirmed in appeal by the Additional District Judge, Gurdaspur.

The respondents-plaintiffs claimed ownership of land measuring 6 kanal on the premise that they purchased land measuring 2 kanal comprising Rect. No. 70 Killas No. 4(7-12) situated in village Bhumbli from Kartar Kaur daughter of Ujjagar Singh, vide registered sale deed dated 6.10.1987. Before executing the said sale deed in favour of respondents, Kartar Kaur had also sold her share from joint khata to various persons. The respondents were also owner of land measuring 4 kanal lehnda out of killa No. 4(7-12). The sale deeds executed by Smt. Kartar Kaur are valid upto the extent of her share in joint khata and sale deed executed by her beyond her share is invalid and mutation of sold property in respect of sale deed dated 6.10.1987 be sanctioned in favour of the respondents. Kartar Kaur sold land measuring 8 kanal to defendants vide sale deed dated 11.11.1987 and revenue authorities in connivance with defendants sanctioned mutation No. 5529 dated 21.1.1988 in favour of the defendants which is illegal, null, void and liable to be set aside.

The sole submission made by counsel for the appellants is that the courts below have grossly erred in deciding the question of limitation against the defendants-appellants and in favour of the plaintiffs-

respondents. It is argued that by way of instant suit, the respondents sought to challenge sale deed dated 11.11.1987 in the year 2009, therefore, suit filed by the respondents-plaintiffs is clearly barred by limitation. It is further argued that even challenge to mutation No. 5529 dated 21.1.1988 sanctioned in favour of the appellants despite knowledge of sanction of mutation immediately after the same, is barred by limitation. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **MD Noorul Hoda vs. Bibi Raifunnisa and others (1996) (7) Supreme Court Cases 767.**

The first Appellate Court, in para 26 of the judgment has adverted to the question of limitation and has held, reads thus:-

“It has been vehemently argued that suit filed by plaintiff is not within limitation. Contention is that mutation was sanctioned in the year 1988 and plaintiffs were to challenge validity of mutation upto 1991 only. This contention raised on behalf of appellants/defendants can not be said to be tenable in any manner. As already held, sale deed in favour of plaintiff dated 6.10.1987 Ex. PC is still in tact and has not been declared null and void. Sale deed is a registered document. It was for the revenue authorities to enter this sale deed in the revenue record to keep the revenue record intact. Defendants, did not come forward to say that they are bonafide purchasers for consideration. It is established on file that Kartar Kaur sold property beyond her share in favour of defendants. She was not competent to convey better title than she herself was having in

the joint holding. Plaintiffs have come in the court on the basis of title i.e. on the basis of sale deed dated 6.10.1987 Ex. PD. Mutation in favour of defendants does not confer any title. Though plaintiffs have claimed relief of possession but relief of joint possession has been given by ld. Lower Court after considering that parties are established to be co-sharers. Consequently, suit can not be said to be barred by limitation because there is no limitation period for filing the suit for possession on the basis of title. As and when plaintiff felt aggrieved by the entries in the revenue record, they approached the court of competent jurisdiction to get their grievances redressed.”

The respondents-plaintiffs have staked their claim qua ownership of land measuring 6 kanal on the basis of ownership of 4 kanal and purchase of 2 kanal of land vide sale deed dated 6.10.1987, executed by one of the co-sharers namely Kartar Kaur. Findings of the courts with regard to sale deed dated 11.11.1987 executed by Smt. Kartar Kaur in favour of the appellants subsequent to the sale in favour of the respondents-plaintiffs and earlier purchaser are the consequence of accepting claim of the respondents-plaintiffs that they are owners to the extent of 6 kanal of land and are entitle to joint possession being co-sharers. This apart, perusal of the pleadings would reveal that the respondents-plaintiffs have not challenged sale deed dated 11.11.1987, on the contrary, they have challenged mutation No. 5529 dated 21.1.1988 sanctioned in favour of the appellants-defendants. There cannot be any dispute that mutation neither creates nor

extinguishes ownership of property. As has rightly been held by the trial court that wrong entries in the revenue record by itself did not provide for cause of action and cause of action arises only when there is a threat to title of the suitor. Equally settled is that no person can bestow a better title upon his vendee than he himself has. If Smt. Kartar Kaur, one of the co-owners in the joint khata comprising land measuring 125 kanal 13 marlas to the extent of 1/10th share had sold more land than that of her share left after sale made in favour of the respondents-plaintiffs, any such sale by Kartar Kaur beyond her share in the joint land would be of no consequence either for the vendee under the sale deed or for vendees who had earlier purchased land from Kartar Kaur that falls within the ambit of her share in the joint land. In this view of the matter, I do not find an error much less illegality in findings of the first Appellate Court on the question of limitation. In the given circumstances, the appellants cannot derive any advantage to their contention from the judgment in **MD Noorul Hoda's case (supra)**, decided in view of the peculiar facts and circumstances of the case.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

8.4.2019
paramjit

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