

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

RSA No.4162 of 2019(O&M)

Date of decision: 29.10.2019

Gurjit Singh Sanghera

.....Appellant

VERSUS

Salinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Varun Goyal, Advocate for the appellant.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby challenge to sale deeds dated 08.12.1986, 25.02.2008 and 23.11.2009 has been dismissed.

The appellant/plaintiff claimed ownership of the suit property i.e. residential house and shops, described and shown red in the site plan situated within the lal lakir of village Sarih Patti Bahoki, Tehsil Nakodar, District Jalandhar by assailing the aforesaid sale deeds being *void ab initio* and not binding on the rights of the plaintiff and performa defendants No.4 to 9 [(successors in interest of Sh. Karnail Singh (since deceased))].

The trial Court framed issues, reproduced in para 5 of the judgment of said Court. Issue No.13 pertains to the question of limitation and reads thus:-

“13. Whether the present suit is time barred? (OPD)”

The said issue was answered against the appellant/plaintiff and in favour of contesting defendant No.1 in view of discussion and

conclusion recorded in para 25 of the judgment of trial Court. The appeal preferred by unsuccessful appellant/plaintiff was dismissed by the Additional District Judge, Jalandhar whereby findings of the trial Court on all the issues were affirmed. The Courts have noticed that Bhupinder Kaur – defendant No.3 vendee under the sale deed dated 08.12.1986 filed a suit for permanent injunction against Karnail Singh in the year 1993 and the same was contested by Karnail Singh. In the plaint Ex.D7, Bhupinder Kaur had alleged that she purchased the plot in dispute from Karnail Singh through his attorney vide sale deed dated 08.12.1986. Karnail Singh neither filed counter claim for cancellation of the said sale deed nor any separate suit was filed by him for challenging the sale deed in favour of Bhupinder Kaur, therefore, Karnail Singh remained silent for a period of nearly 17 years after filing suit for injunction, therefore, the instant suit filed by appellant Gurjit Singh Sanghera son of Karnail Singh is time-barred and liable to be dismissed.

Counsel for the appellant would argue that since Sh. Karnail Singh never authorized his brother Swaran Singh for sale of suit property in view of power of attorney executed by him in favour of said Swaran Singh to manage his affairs qua the suit property during his absence from India as Karnail Singh was residing abroad, the sale deed dated 08.12.1986 executed by said Swaran Singh in favour of Bhupinder Kaur is *void ab initio* and as such the present suit would be governed by Article 65 and not Article 58 of the Limitation Act, 1963 (in short 'the Act'), therefore, findings of the Courts on the question of limitation are liable to be set aside. In support of his contention, he has relied upon judgment of Hon'ble

the Supreme Court **State of Maharashtra Vs. Pravin Jethalal Kamdar (dead)) by LRs, AIR 2000 SC 1099.**

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

Counsel for the appellant has not disputed the factual findings recorded by the Courts that in civil suit No.625 dated 01.10.1993 filed by Bhupinder Kaur – defendant No.3 against Karnail Singh, she had specifically claimed her right to the suit property on the basis of sale deed dated 08.12.1986 executed by Swaran Singh as an Attorney of Karnail Singh, erstwhile owner of the suit property. Sh. Karnail Singh contested the said case but did not challenge the correctness of sale deed dated 08.12.1986 either by filing a counter claim or a separate suit till he remained alive up to the year 2008. No sooner Sh. Karnail Singh gained knowledge of existence of sale deed dated 08.12.1986, cause of action to assail the sale deed accrued to him in the year 1993. As per the settled position in law, once the period of limitation starts, it does not stop. Since Sh. Karnail Singh never challenged sale deed dated 08.12.1986 within the prescribed period of limitation from the date of accrual of cause of action, the present suit filed by his son claiming right to the suit property through his father in the year 2010 has rightly been held to be barred by law of limitation. In this view of the matter, the appellant cannot derive any advantage to his contention from the judgment in **State of Maharashtra's case** (supra), decided in view of peculiar facts and circumstances of the case wherein order dated 26.05.1976 was held to be without jurisdiction and nullity and consequently sale deed executed pursuant to the said order would also be a nullity, therefore, Article 65 of the Limitation Act was

held to be applicable and limitation to file the suit would be 12 years. In view of the above, I do not find an error much less perversity qua determination of question of limitation against the appellant/plaintiff. That being so, findings of the Courts on the issue of limitation are affirmed. In the given circumstances, examining other contentions raised by the appellant would be an exercise in futility at the cost of making the judgment lengthy.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay in re-filing the appeal is of academic relevance only.

OCTOBER 29, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no