

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

RSA No.4609 of 2011(O&M)

Date of decision: 5.7.2019

Shakti Kumar Khanna

.....Appellant

VERSUS

Dharam Pal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Kiran Bala Jain, Advocate and
Mr. Radhe Shyam Sharma, Advocate for the appellant.

Mr. Saurabh Garg, Advocate for respondent No.3.

REKHA MITTAL, J.

CM No.13418-C of 2011

Prayer in this application filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') is for amendment of the plaint in order to add relief of declaration for setting aside the sale deed dated 14.02.1990.

When counsel for the applicant-appellant was confronted with proposed amendment being hit by law of limitation as sale deed of 1990 was sought to be challenged in a suit instituted in the year 2001 even if the amendment is allowed without any rider that the same will not relate back to the date of institution of the suit, counsel for the applicant-appellant would state that the application may be dismissed as withdrawn.

Ordered accordingly.

CM No.13419-C of 2011

Prayer in this application under Order 41 Rule 27 read with Section 151 CPC is for permission to file original sale deed by way of additional evidence.

Counsel for the non-applicant/respondent No.3 would state that he has got no objection if original sale deed dated 16.03.1983 is allowed to be produced on record.

In view of above, the application is allowed and original sale deed dated 16.03.1983 shall be taken into consideration for decision of the appeal.

Disposed of accordingly.

RSA No.4609 of 2011

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession qua land measuring 8 - 3/30 marlas (243 square yards) out of land measuring 42//18/2, 23 situated in village Babyal Tehsil and District Ambala was dismissed by the trial Court vide judgment and decree dated 12.05.2010 and appeal preferred by unsuccessful plaintiff/appellant was dismissed by the District Judge, Ambala on 17.08.2011.

Indisputably, the disputed property measuring 243 square yards was purchased by the plaintiff/appellant vide sale deed dated 16.03.1983. Respondent No.1/defendant No.1 has contested claim of the appellant on the basis of sale deed dated 14.02.1990 Ex.D1, purported to be executed by the appellant in favour of defendant Dharam Pal and said Dharam Pal executed sale deed dated 16.07.2003 Ex.D2 in favour of defendant- Devinder_Parkash (respondent No.3 herein) during pendency of the suit.

Counsel for the appellant would argue that the sale deed dated 14.02.1990 Ex.D1 was never executed by the appellant/plaintiff. The appellant examined Sh. N.K. Jain, Document Expert PW-2 and he prepared a report on the basis of comparison that sale deed dated 14.02.1990 does not bear signatures of appellant – Shakti Kumar Khanna. It is further argued that the respondents/defendants did not examine handwriting expert to rebut the report and evidence of Sh. N.K. Jain. It is further argued that the appellant has five daughters and he purchased the suit property for the purpose of constructing his house. As the appellant was in service and stayed away from Ambala for a period of 7 years since execution of the sale deed in March 1983, taking advantage of absence of the appellant from Ambala, defendant No.1 illegally and forcibly occupied the suit property and prepared a false, frivolous and fake sale deed dated 14.02.1990. It is argued with vehemence that the Courts below have failed to appreciate evidence on record in right perspective, thus, grossly erred in dismissing claim for possession of suit land by the appellant/plaintiff.

Counsel representing respondent No.3, on the contrary, has supported consistent findings recorded by the Courts. It is argued that the Court in appeal has rightly held that Sh. N.K. Jain did not make comparison on the basis of specimen signatures of the appellant, obtained before the Court and contesting party. It is further argued that none of the standard signatures taken into consideration by the aforesaid so-called expert were appended before the Court and rather the same were affixed outside the Court. It is further argued that original sale deed dated 16.03.1983 produced before this Court does not bear signatures of the appellant. The appellant failed to adduce cogent and convincing evidence

to establish his plea that the sale deed dated 14.02.1990 is false, fictitious and fake document.

Counsel would inform that with regard to sale deed dated 14.02.1990, the appellant lodged criminal proceedings by registering an FIR but those proceedings culminated in judgment of acquittal. He has further argued that in the criminal proceedings, the appellant refused to give his sample signatures for the purpose of comparison, sufficient to show that he has filed a false suit to grab the suit property which was sold by him in favour of defendant – Dharam Pal. He has further argued that the trial Court has decided the question of limitation pertaining to issue No.5 while taking into consideration the provisions of Article 64 and 65 of the Limitation Act, 1963 (in short 'the Act') but the Court failed to appreciate that suit to challenge sale deed dated 14.02.1990 filed in the year 2001 is clearly barred by limitation. According to counsel, the appellant intentionally did not seek the relief of declaration to challenge the aforesaid sale deed knowing fully well that his claim would be hit by the law of limitation and the same is evident from the fact that counsel for the appellant withdrew application for amendment filed in second appeal to add the relief of declaration to challenge the sale deed in question.

I have heard counsel for the parties, perused the paper-book and records.

The appellant initially filed a suit for mandatory injunction directing the defendant – Dharam Pal to hand-over vacant possession of the disputed land with consequential relief of permanent injunction restraining him not to alienate the said property. Defendant No.3, subsequent purchaser of the suit land, filed an application under Order 1 Rule 10 (2) CPC for impleadment as a party and the same was allowed.

Subsequent thereto, the appellant filed an application for amendment of the plaint in order to substitute the relief of possession in place of mandatory injunction. The application was allowed by the trial Court and as a consequence, the suit for mandatory injunction was converted to that of possession of disputed land with consequential relief of permanent injunction against alienation of suit land. In the amended plaint, the appellant in para 3 has raised the plea that defendant No.1 has occupied forcibly and illegally without any right or authority on the basis of false, frivolous, fake sale deed dated 14.02.1990 and defendant No.1 has given threats to liquidate the plaintiff and his family. In para 4, there is reference to registration of FIR No.120 dated 30.05.2001 in Police Station Mahesh Nagar, Ambala Cantt against defendant No.1.

The trial Court framed issue No.5 on the question of limitation, reads thus:-

"5. Whether the suit is time barred? OPD"

As has been rightly argued by counsel for respondent No.3, the said issue was decided by the trial Court keeping in view that the appellant had filed suit for possession and as such Article 64 and 65 of the Act would be attracted and as the same has been filed within a period of 12 years from the date of alleged dispossession, the same is within limitation.

There cannot be dispute about settled position in law that it is obligation of the Court to examine if the suit filed by a litigant is within limitation or otherwise. If the suit is barred by limitation, the plaint can be rejected under Order 7 Rule 11 CPC. In the case at hand, appellant had not approached the Court with clean hands. Initially, he filed a suit for mandatory injunction directing defendant No.1 to deliver possession of suit land and in the process he was not required to pay requisite Court fee

which is attached in a suit for possession. Later, he filed an application for amendment of the plaint to convert the suit for mandatory injunction to that of possession by pleading that the sale deed is fake, frivolous and false. The appellant again did not seek the relief of declaration to challenge sale deed dated 14.02.1990. He filed an application for amendment of the plaint in second appeal to add the relief of declaration to challenge the sale deed in question but the same was withdrawn, noticed hereinbefore.

Counsel for the appellant, in response to a query, whether the appellant can recover possession of the suit property without getting the sale deed dated 14.02.1990 set aside, is not in a position to give any convincing and satisfactory reply. The trial Court would have been right in deciding the question of limitation in the light of Article 64 and 65 of the Act had there been no such sale deed dated 14.02.1990 that cast a cloud upon rights of ownership of suit property qua the appellant.

The question for consideration is (1) whether the appellant can maintain a simplicitor suit for possession without seeking setting aside of sale deed dated 14.02.1990? (2) If the appellant cannot recover possession without getting the aforesaid sale deed set aside can he be permitted to subvert the implications of law of limitation by omitting to seek relief of declaration qua the sale deed in question?

The answer, at the outset, appears to be in the negative. The appellant cannot maintain a suit for possession without getting sale deed dated 14.02.1990 set aside in appropriate proceedings. I would hasten to add that even the defendants raised a specific plea that the suit is not maintainable in the present form and the trial Court framed issue No.3 on this aspect of the matter.

A suit for declaration to challenge sale deed dated 14.02.1990 could be maintained by the plaintiff either from the date of its execution or in case of pleadings that the sale deed was not executed by him, from the date of knowledge. On due consideration of averments raised in the plaint originally filed in the year 2001 as well as amended plaint in the year 2008, it is evident that the appellant raised a specific plea in para 2 that after purchase of suit plot, he remained posted out of District Ambala for about 7 years and when he along with his family returned to Ambala Cantt to his plot, he found defendant No.1 there. He requested defendant No.1 that he (plaintiff) is the absolute owner of the plot but defendant No.1 told that he had purchased the plot from one Shakti Kumar Khanna and when the plaintiff requested to show the sale deed, he (defendant No.1) was in the process of delaying the matter on one pretext or the other. These averments in the plaint make it apparent that in the year 1990 i.e. 7 years from 1983 the appellant came to know about possession of defendant No.1 over the suit plot and the fact that defendant No.1 has asserted his claim to the suit plot on the basis of sale deed executed by one Shakti Kumar Khanna. There is nothing on record suggestive of the fact as to what inquiries were made by the appellant/plaintiff to know about if any sale deed stands registered in the name of defendant No.1 in records of the concerned registering authority. If the appellant did not bother to know about status of said sale deed, he cannot derive any advantage thereof to escape from provisions of the Act to challenge correctness of sale deed dated 14.02.1990 within limitation at least from the date of knowledge that defendant No.1 has justified possession on the basis of sale deed purportedly executed by Shakti Kumar Khanna. Not only this, in para 10 of the plaint, it has been specifically averred that cause of action has arisen

in favour of the plaintiff on 14.02.1990 when defendant No.1 prepared a false sale deed purported to be signed by the plaintiff and forcibly occupied/took-over the land in question on the strength of said false and fake sale deed. As per the settled position in law, limitation once starts does not stop. In the instant case, cause of action to challenge the sale deed in favour of Dharam Pal accrued to the appellant in the year 1990 but he did not take recourse to appropriate remedy to challenge the sale deed within the stipulated period of limitation of three years from the date of knowledge. It appears that since the appellant allowed the limitation to challenge sale deed dated 14.02.1990 to expire, he intentionally did not seek relief of declaration to challenge said sale deed dated 14.02.1990. Once the appellant cannot maintain his plea for possession without getting the sale deed dated 14.02.1990 set aside by filing competent proceedings, suit for possession simplicitor is not maintainable and his claim for challenging the sale deed is clearly barred by limitation. In this view of the matter, it can safely be held that the appellant/plaintiff intentionally did not seek the relief of declaration to avoid implications of Act and rather tried to subvert the provisions of limitation by filing a simplicitor suit for possession which cannot be maintained without setting aside sale deed dated 14.02.1990 in the given scenario. Consequently, both the aforesaid questions are answered against the appellant. In this view of the matter, I do not find any reason to interfere in the judgments impugned.

For the foregoing reasons, the appeal is dismissed. Original records of the trial Court be sent back.

JULY 5, 2019

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no