

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

**RSA No.3661 of 2016 (O&M)
Date of Decision.11.01.2019**

Harbhajan Singh

...Appellant

Vs

Balwant singh and others

...Respondents

2. RSA No.1433 of 2017

Harbhajan Singh

...Appellant

Vs

Balwant singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Dua, Advocate for
Mr. Parvez Chugh, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing No.3661 of 2016 and 1433 of 2017. The appellants-plaintiff has not been successful in claiming relief of declaration before both the Courts below.

The plaintiff sought the decree of declaration that he along with defendant No.1 was joint owner of land measuring 23 kanals 8 marlas and the sale deeds/transfer deeds allegedly executed by the plaintiff in favour of defendant No.1 qua land measuring 7 kanals 8 marlas, in favour of defendant No.3 qua 4 kanals and in favour of defendant No.2 qua 7 kanals and 8 marlas were not binding upon him nor the decree shown to have been passed by Sub Judge, Ferozepur was entered in revenue record vide rapat No.143 and 115

of 1994, thus, would be binding. It was pointed that about 15 years back, plaintiff and his brother Darshan Singh used to reside in the village and the land measuring 23 kanals 8 marlas comprised in Khewat No.53/55 was jointly owned by plaintiff and defendant No.1 in equal shares. There was some other land measuring 12 acres owned by plaintiff and defendant No.1 as well as their sister. Before that other suit was filed. Defendant No.1 took the undue advantage of the absence of the plaintiff and got executed fictitious sale deeds by impersonation in his favour and as well as in favour of defendant No.3, which were never executed by the plaintiff, thus, there was a fraud and misrepresentation.

Defendants No.1, 4 and 5 filed joint written statement and opposed the suit to be barred by limitation. It was contended that there was already division amongst plaintiff and defendant No.1 by way of family partition effected in the year 1975. Defendant had become exclusive owner of khasra No.40, Killa No.22(8-0), 21/2 (8-0) and the remaining land had fallen to the share of the plaintiff. Plaintiff had sold 4 kanals out of land in Killas No.21/2 of Khasra No.40 to one Kikkar Singh and defendant had further purchased abovesaid land from Kikkar Singh vide registered sale deed dated 23.5.1985. As regards khasra No.40, 23/1(3-8), the same was mortgaged by the plaintiff to defendant No.1 vide agreement dated 11.7.1979 for ₹6000/-. Defendant had filed suit for recovery against the plaintiff, which was decreed by the trial Court vide judgment and decree dated 2.12.1983. Defendant No.1 sold land measuring 7 kanals 8 marlas to defendant No.3. Defendant No.3 filed the suit for

specific performance and in that suit, land of the plaintiff was attached and put to auction vide order dated 23.1.1994. Land out of suit land bearing Khasra No.40M 23(3-8) was attached and execution was satisfied against this land and defendant No.1 was made owner, therefore, plaintiff had no right to challenge aforesaid decree as defendant had become owner in accordance with law.

Plaintiff examined himself and brought on record jamabandies for the year 1993-1994, 1998-1999 and 2003-2004 as Ex.P1 to P3 whereas the defendants examined four witnesses and tendered documents Ex.D1 to D13.

Learned counsel appearing on behalf of the appellant submitted that judgments and decree of the Courts below are not sustainable in the eyes of law as based upon non-appreciation of oral and documentary evidence on record as the defendants failed to lead any evidence in support of the averments and revenue record reflected jointness of the property. In such circumstances, the suit was liable to be decreed.

I am afraid aforementioned argument is not sustainable as sale deed and transfer deed brought on record shows that they were executed by plaintiff in favour of defendant No.1 in respect of land measuring 7 kanals 8 marlas comprised in Khasra No.40, Killa No.21/2(4-0), 23/1(3-8) and land measuring 4 kanals in Khasra No.40, Killa No.23/2(3-8), 23/2 min (0-12) executed in favour of defendant No.3 by the plaintiff and exchange of land effected vide mutation No.3102. Once ingredients of fraud and misrepresentation remained unproved except the bald statement of the plaintiff, suit

could not have been decreed.

The appeal bearing RSA No.3661 of 2016 is accompanied by applications for condonation of delay of 281 days in filing and 212 days in refilling whereas RSA No.1433 of 2017 is accompanied by applications for condonation of 282 days in filing and 319 days in re-filing. The explanations given in the applications are not reasonable, plausible and lacks bona fide.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. The appeals are dismissed both on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

January 11, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No

