

RSA No.6398 of 2016 (O&M)

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

**RSA No.6398 of 2016 (O&M)
Date of decision:22.04.2019**

Rajni Sharma

... Appellant

Vs.

Animesh Tyagi and others

... Respondents

RSA No.5313 of 2016 (O&M)

Rajni Sharma

... Appellant

Vs.

Gayatri Devi and another

... Respondents

RSA No.141 of 2017 (O&M)

Rajni Sharma

... Appellant

Vs.

Pushkar Dutt Tyagi (deceased through LRs) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Mansur Ali, Advocate and
Mr. Ritesh Pandey, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.16792-C of 2016 in RSA No.6398 of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 16 days in re-filing the appeal is condoned.

C.M. stands allowed.

C.M.No.278-C of 2017 in RSA No.141 of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 14 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA Nos.6398, 5313 of 2016 and 141 of 2017 (O&M)

This order of mine shall dispose of three regular second appeals bearing Nos.6398, 5313 of 2016 and 141 of 2017 directed against the judgments and decrees of both the Courts below whereby the appellant-plaintiff has not been successful in laying challenge to the sale deed dated 25.02.1987 pertaining to three parcels of land.

The plaintiff alleged herself to be owner of the property by virtue of the Will executed by Kamlawati, who, as per the averments, was adopted mother. During her life time, she executed two documents i.e. power of attorney dated 27.4.1985 and release deed dated 29.04.1985 in favour of plaintiff and her husband, respectively. While the appellant acting as an attorney, sold the aforementioned land in favour of defendant no.1. It was alleged that since the appellant was resident of Muradabad (U.P), could not manage the property. The defendants were none else but the relatives. There was a clear recital for not handing over the possession or exchange of any sale consideration. The dispute only arose after the demise of Kamlawati on 14.03.1999, resulting into filing of suit in 2001.

The defendants opposed the suit by raising the preliminary

objections qua maintainability and limitation and stated to be an act of greed. Both the parties led the extensive evidence.

Learned counsel appearing on behalf of the appellant submitted that recital in the sale deed do not reflect the compliance of the provisions of Section 58(1)(C) of registration Act and in support of the aforementioned contention relied upon paragraphs 23 and 24 of judgment rendered by the Hon'ble Supreme Court in **Bhagat Ram and another Vs. Suresh and others AIR 2004 Supreme Court 436**. Both the Courts below abdicated in not bringing the suit within the provisions of Article 58 of the Limitation Act whereas it was filed under the provisions of Article 59. There is no limitation asserting the right qua title. The possession was never handed over to the vendee and continued to remain with the husband being lessee.

I am afraid the aforementioned arguments are not tenable as the Division Bench of this Court in **Ibrahim @ Dharam Vir vs. Sharifan @ Shanti 1980 AIR Punjab 25** held that no doubt, the limitation would not be a impediment for claiming the right to the title and can be invoked only when there is threat to the possession or title.

Since during the period of 12 years, Kamlawati remained alive, no challenge was laid to the sale deed. The suit was nothing but an act of aggrandizement. The ratio decidendi culled out in paragraph 23 of the aforementioned judgment was pertaining to the provisions of Section 68 of Indian Evidence Act qua tenor and mode of the witnesses sufficing the requirement of the aforementioned provisions of the Act. The expression

“may” is not mandatory, has been held to be interpreted in such manner. A person who is not party to the transaction or was without consideration would not remain silent/would make all possible efforts to take appropriate steps, much less criminal action is reflection of the greed.

The finding of fact and law cannot be said to be suffering from illegality and perversity to form a different opinion than the one arrived at by the Courts below.

Resultantly, the regular second appeals are dismissed.

(AMIT RAWAL)
JUDGE

April 22, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No