

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: March 12, 2019

1. RSA No.6980 of 2016 (O&M)

Gurdip Singh Dhillon & others

...Appellants

Versus

Gurmej Kaur & another

...Respondents

2. RSA No.6453 of 2016 (O&M)

Gurdip Singh Dhillon & others

...Appellants

Versus

Gurmej Kaur & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Onkar Rai, Advocate,
for the appellants in both the cases.

AMIT RAWAL, J. (Oral)

CM No.3119-C of 2019 in RSA No.6980 of 2016

CM No.3112-C of 2019 in RSA No.6453 of 2016

For the reasons mentioned in the applications, which are supported by affidavits, delay of 55 days in re-filing the applications for restoration is condoned.

Application stand disposed of.

CM No.3123-C of 2019 in RSA No.6980 of 2016

CM No.3113-C of 2019 in RSA No.6453 of 2016

For the reasons mentioned in the applications, which are supported by affidavits, the order dated 16.11.2018 is recalled and the appeals are restored to their original numbers.

Applications stand allowed.

CM Nos.18072-C & 18073-C of 2016 in RSA No.6980 of 2016

For the reasons mentioned in the applications, which are supported by affidavits, delay of 29 days in re-filing and 99 days in filing the appeal is condoned.

Applications stand disposed of.

CM Nos.16912-C & 16913-C of 2016 in RSA No.6453 of 2016

For the reasons mentioned in the applications, which are supported by affidavits, delay of 181 days in re-filing and 4 days in filing the appeal is condoned.

Applications stand disposed of.

RSA Nos.6980 & 6453 of 2016

This order of mine shall dispose of two Regular Second Appeals bearing No.6980 and 6453 of 2016 as common question of law and fact is involved. The facts are being taken from RSA No.6980 of 2016.

Plaintiff has not been successful in challenging the sale deed dated 29.01.1999 executed by the power of attorney holder Pal Singh in favour of Gurmej Kaur by filing the suit in 2007 and as well as mesne profits.

It was alleged that Pal Singh attorney holder misused the attorney and executed a sale deed in favour of his wife without any consideration, necessitating the plaintiff to cancel the same vide registered cancellation deed dated 30.12.1998. The agent breached the trust reposed by the plaintiff, who was an NRI and was not in India. He acquired the knowledge only in 2007 when visited India and placed on record the passport as a marked document.

The defendants opposed the suit and raised objections qua maintainability, limitation and of sale consideration.

Mr. Onkar Rai, learned counsel for the appellants submitted that the judgments and decrees of the courts below are not sustainable in the eyes of law, for, the defendants have miserably failed to produce on record any evidence to establish that the sale consideration of the land measuring 35 kanals 15 marlas was paid to the owner, i.e., the plaintiff. The passport revealed the fact that the plaintiff was not in India during this period and also did not visit except in 2007 and, therefore, the suit cannot be said to be suffering from rigours of the limitation.

I am afraid, the aforementioned argument is not sustainable for the simple reason that the limitation, as per Article 56 of the Limitation Act to declare forgery or instrument, is three years. The cancellation of the power of attorney was done in the year 1998. The alleged act of the defendants came to the knowledge of the plaintiff in 2007 and limitation of challenging the sale deed expired in 2002. However, the suit was filed in 2007. No relief of refund of money from the power of attorney holder, i.e., defendant No.2 had also been sought, therefore, the courts below could not have redressed the grievance of the plaintiff as sought for.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeals are dismissed.

March 12, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No