

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

**Civil Revision No.1602 of 2020 (O&M)
Date of Decision: 05.03.2020**

Harjinder Singh

.....Petitioner

Versus

Sukhjinder Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Amarbir Singh Pahwa, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 10.01.2020 (P-1), passed by learned Civil Judge (Jr. Divn.), Ludhiana, whereby the application under Order 7 Rule 11 (d) of the Code of Civil Procedure of the petitioner/defendant No.1 for rejection of the plaint was dismissed.

It is contended by learned Counsel for the petitioner that respondent No.1/plaintiff-Sukhjinder Singh filed a suit for declaration on 04.06.2019 while challenging two Sale Deeds dated 25.06.2015 along with the earlier order dated 06.06.2014, sanctioning mutation by the Assistant Collector 1st Grade, Ludhiana regarding the plot in question measuring 243 sq. yds., thus, the suit was barred by limitation, but despite that, learned trial Court has wrongly dismissed the application while passing the impugned order. Reliance is placed upon the judgment of the Hon'ble Supreme Court, titled as '**Raghwendra Sharan Singh Versus Ram Prasanna Singh (Dead) by LRs'**, AIR 2019 Supreme Court 1430 in support of his contention that when a suit is filed by the party after a period of three years, then the same is liable to be rejected outrightly. Also contended that

both the Sale Deeds are registered documents, therefore, respondent No.1/plaintiff was having the constructive notice of the same and thus, he cannot take the benefit of the assertions made in the plaint on the ground that the Sale Deeds under challenge were not in his knowledge.

Heard learned Counsel for the petitioner and perused the paper-book.

It transpires that respondent No.1/plaintiff filed a suit for declaration to the effect that he along with respondent No.2/defendant No.4 are owners of plot measuring 243 sq. yds., situated in Village Sunet, H.B. No.159 (Abadi Sham Nagar), District Ludhiana and the Sale Deeds Nos.3424 & 3425 dated 25.06.2015 (121½ sq. yds. each), executed by the petitioner/defendant No.1-Harjinder Singh in favour of respondent Nos.3 and 4/defendant Nos.2 and 3, respectively are illegal, null & void being collusive and as such nullity with consequential relief of possession. Further prayer was for permanent injunction restraining respondent Nos.3 and 4/defendant Nos.2 and 3 from alienating the suit property or raising any constructions or creating any charge etc.

This Court has gone through the contents of the plaint (P-2) and perusal of the same reveal that respondent No.1/plaintiff is settled in Canada since 1980. He came to India on 20.01.2019, obtained copy of the *jamabandi* of the plot in question from Halqa Patwari and gained knowledge about the execution of the Sale Deeds dated 25.06.2015 by the petitioner. He immediately applied for certified copies of the Sale Deeds on 23.01.2019, which were supplied to him on 05.02.2019. The suit was filed on 04.06.2019, claiming that cause of action accrued in favour of respondent No.1/plaintiff on 23.01.2019.

Para Nos.11 and 13 of the plaint being material are also extracted as under:-

“11. That the plaintiff came to India on 20.01.2019 and he thereafter approached the Patwari Halqa to obtain a copy of the jamabandi of the suit plot. From the patwari Halqa, the plaintiff gained knowledge that the defendant No.1 has illegally and without title executed the following sale deeds:-

a) Sale deed with regard to plot measuring 121.1/2 sq. yards bounded on the East: Road 15', West: Plot No.16 15', North: Surinder Pal Kaur 173' and South: Plot no.4 73' out of the aforesaid Khasra numbers executed defendant no.1 in favour of defendant no.2 vide registered sale deed bearing wasika No.3424 dated 25.06.2015 and

b) Sale deed with regard to plot measuring 121.1/2 sq. yards, bounded on:

East: Road, 15'

West: Plot No.16, 15'

North: Veena Rani Kalra 73'

South: Sukhjit Singh 73'

out of the above detailed Khasra numbers executed by defendant no.1 in favour of the defendant no.3 vide registered sale deed bearing wasika No.3425 dated 25.06.2015.

13.That the plaintiff applied for certified copies of the sale deeds on 23.01.2019 and the same have been supplied to him on 05.02.2019. From the date of knowledge, the present suit is within time. Prior to 23.01.2019, the plaintiff had no knowledge of any kind about the alleged sale deeds detailed above and the validity and legality of which have been challenged in the present suit. The plaintiff also obtained the copy of the mutation No.31533 on 1.3.2019.”

Since there is a challenge to both the Sale Deeds dated 25.06.2015 in addition to the relief of possession as well as permanent injunction and cause of action is claimed to have arisen on 23.01.2019 on the specific averments that respondent No.1/plaintiff is settled in Canada since the year 1980. All these averments are to be considered by learned trial Court after adducing evidence by both sides. Petitioner/defendant No.1 will have a right to controvert the averments made in the plaint, not only by filing the written statement, but also by producing other relevant material permissible under law. Thus, taking into consideration the factual aspect of the matter, it would not be appropriate to reject the plaint at the threshold on the ground of limitation without adjudicating the averments made by the plaintiff to that effect, more particularly, the para Nos.11 and 13, extracted hereinabove.

The judgment cited by learned Counsel for the petitioner in **Raghwendra Sharan Singh (supra)** is not helpful for the simple reason that in that case, a registered Gift Deed dated 06.03.1981 was challenged by the plaintiff in a civil suit filed in the year 2003. Also to be noticed that in that case, defendant had already filed a suit in the year 2001 on the basis of Gift Deed dated 06.03.1981 for partition of joint Hindu family properties and the plaintiff was duly served on 21.12.2001, but despite that, he claimed that plaintiff came to knowledge about the Gift Deed only on 10.04.2003 and the relevant part of the judgment is extracted hereasunder:-

“Considering the averments in the plaint, it can be seen that, as such, the plaintiff has specifically admitted that the plaintiff and his brother executed the gift deed on 06.03.1981. It is admitted that the gift deed is a registered gift deed. It also emerges from the plaint that till 2003, neither the plaintiff nor his brother (during his

lifetime) challenged the gift deed dated 06.03.1981 nor, at any point of time, claimed that the gift deed dated 06.03.1981 was a showy deed of gift. In fact, it is the defendant– appellant herein who instituted the suit in the year 2001 against his brothers to which even the plaintiff was a party as defendant No. 10 and that was a partition suit filed by the appellant herein original defendant. It appears that the summon and the copy of the plaint - T.S. (Partition) Suit No. 203 of 2001 was served upon the plaintiff in the year 2001 itself. Still, the plaintiff averred in the plaint that it came to the knowledge of the plaintiff with respect to the gift deed on 10.04.2003. Thus, it is born out from the averments in the plaint that, till 2003, the plaintiff never disputed the gift deed and/or never claimed that the gift deed dated 06.03.1981 was a showy deed of gift. With the aforesaid facts and circumstances, the application submitted by the appellant–original defendant to reject the plaint in exercise of powers under Order 7, Rule 11 of the CPC is required to be considered.”

In view of the facts and circumstances, discussed hereinabove, this Court does not find any illegality or perversity with the impugned order, passed by the learned trial Court, thus, the present petition is without any substance and the same is liable to be dismissed.

Ordered accordingly.

The above observations may not be construed as an expression of opinion on the merits of the case.

March 05, 2020
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes