

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

RSA No.605-2018(O&M)

Date of decision: 07.01.2020

Jahruddin

.....Appellant

Versus

Jan Mohammad and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Virender Rana, Advocate for the appellant

ANIL KSHETARPAL, J. (ORAL)

CM-1524-C-2018

Allowed as prayed for.

Main case

Plaintiff-appellant is in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below dismissing the suit filed by him for declaration that the sale deeds dated 3.6.1977 (two in number) are result of fraud and fabrication with a consequential relief of permanent injunction. These three sale deeds have been executed by three brothers namely appellant-Jahruddin, Isa Mohammad and Mohammad Isa. Both the Courts on appreciation of evidence have found that the plaintiffs have failed to produce any substantive evidence to prove fraud or forgery. The Courts have further found that plaintiff was in knowledge of the execution of the sale deeds and therefore, the suit filed by the plaintiff is barred by limitation as sale deeds of the year 1977 were sought to be challenged for the first time on 14.2.2003.

Learned counsel for the appellant has submitted that

Mohammad Isa, one of the brothers of the appellant who was executant

of the alleged sale deed had died on 31.12.1976 i.e before the execution of the sale deeds. He, hence, submitted that the sale deeds were obviously result of fraud.

On being confronted, he admitted that in the plaint, the plaintiff has pleaded that Mohammad Isa had executed the sale deeds, although, he was minor at that time. Hence, evidence is contrary to the pleadings in the plaint. Had Mohammad Isa died on 31.12.1976, the plaintiff would not have pleaded that Mohammad Isa had executed the sale deed. In such circumstances, apart from tendering the alleged death certificate in evidence, no other evidence to corroborate the death certificate has been produced. He also admitted that appellant and his other brother i.e Isa Mohammad were also executant of the aforesaid sale deed. In absence of reliable evidence to the effect that Mohammad Isa was not alive on the day the alleged sale deed was executed, it would not be appropriate to set aside a registered sale deed on mere tendering of the alleged death certificate in the facts of this case.

Hence, no ground to interfere is made out.

Dismissed.

07.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No