

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

RSA No. 252 of 2021 (O & M)
Date of decision: 06.09.2021

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Shishpal

....Appellant(s)

Versus

Mahipal and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. P.R. Yadav, Advocate,
for the appellant.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 1637-C of 2021

Application for condonation of delay of 804 days in refiling the appeal is allowed, in view of the averments made in the application duly supported by affidavit.

RSA No. 252 of 2021 (O & M)

The plaintiff-appellant has filed the present regular second appeal being dis-satisfied with the dismissal of suit for declaration by the Civil Judge (Jr. Divn.), Mahendergarh dated 15.09.2014. The plaintiff-appellant is also aggrieved by the dismissal of the appeal by the Additional District Judge, Narnaul dated 24.07.2017.

Counsel for the appellant has vehemently submitted that the alienation, as such, vide sale deed dated 30.09.1985 was not of a specific portion of land and, therefore, the land being joint, benefit, as such, should not to go respondent nos. 1 to 4 and, therefore, submits that the Courts below were not justified in dismissing the suit.

In the considered opinion of this Court, the Courts were well justified in dismissing the suit, in as much as, it has been noticed that the alienation was done not only by the mother of the plaintiff but also the brother way back in the year 1985. The civil suit was filed on 16.02.2009, after more than 2 decades challenging the same. The counter claim was then filed that the said defendants were in settled possession of 11 kanals 8 marlas and had made improvements in the same. Resultantly, on the issues framed, the trial Court came to the conclusion that the land had been alienated for a sum of Rs. 47,000/- by the eldest members of the family at that point of time since the father had expired on 29.10.1983. The said defendants had themselves never challenged the sale deed and it was noticed that in cross examination that the plaintiff himself had admitted that he was aware of the sale deed and, therefore, the Court had declined to grant the declaration. Resultantly, counter claim was allowed and the benefit of injunction, as such, has been granted to the said persons whereas, the suit filed by the plaintiff-appellant was dismissed.

The appellate Court has noticed that as per the joint holding, the share of the defendants in Khewat No. 99 comes to 17 kanals. The value of the disputed portion is 11 kanals 8 marlas. Resultantly, it was noticed that if any fraud had been played, the plaintiff would not have slept over his rights over so many years and only on account of steep escalation of prices of land, they have challenged the sale deed. The additional issue no. 8 of limitation which had not been decided in favour of the defendants was also accordingly decided by holding that Section 3 of the Limitation Act, 1963 categorically provides that if the suit is filed beyond the prescribed period, it will be dismissed even if the plea of limitation is not

being set up by the defendants.

In the opinion of this Court, reliance upon judgment of the Apex Court in ***Raj Kumar and another vs. M/s. Chiranji Lal Ram Chand and others, 1996 AIR (SC) 941***, upon which strong reliance is placed by Mr. Yadav, is without any basis. In the said case, the issue raised was that the application filed was after limitation and the Apex Court came to the conclusion that if there was a cloud cast on the title of the official receiver, the limitation would begin to run when the cloud was cast and, therefore, it was held that the application was within limitation.

In the present case, there is no dispute, as such, that the sale deed was executed way back in the year 1985. For over two long decades, the plaintiff chose not to challenge the same and filed the suit only on 16.02.2009. The seeds of the cloud in the nature of the sale deed had been sown not only by the mother and the brother who are residing in the same house and, therefore, it does not lie in the mouth of the plaintiff to say that he was not aware of the sale deed executed by the close family members especially once mutation had also been done in by the Revenue Authorities on 24.12.1986. A perusal of the Memo of Parties would go on to show that they are residents of the same village and challenge to the sale deed at a belated stage is only a dishonest attempt made by the plaintiff whereby, the close family members have alienated the land for a princely sum of Rs.47,000/- at that point of time. The mother and the brother themselves chose not to challenge the sale deed as they themselves were party to it and, therefore, the Courts were well justified in dismissing the suit seeking declaration for setting aside the sale deed and the subsequent mutaiton done.

No question of law, as such, arises for consideration of this Court and accordingly, the present appeal is dismissed in limine.

06.09.2021
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No