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

**RSA-1123-2022 (O&M)
Reserved on :- 23.05.2022
Date of decision : 31.05.2022**

Santu @ Sant Ram through his LRs and Others

.....Appellants

Versus

Raghubir @ Raghubar and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ranjit Saini, Advocate for the appellants.

ALKA SARIN, J.

CM-3589-C-2022

This is an application for condonation of delay of 198 days in filing the appeal.

For the reasons stated in the application, the delay of 198 days in filing the appeal is condoned.

CM stands disposed off.

CM-3591-C-2022

This is an application for impleading the legal representatives of appellant No.1, Santu @ Sant Ram, who is stated to have died on 04.08.2020 i.e. after the decision of the appeal by the lower Appellate Court but before filing of the present regular second appeal.

For the reasons mentioned in the application, the same is allowed subject to just exceptions and the legal representatives of appellant No.1, Santu @ Sant Ram, as mentioned in para 4 are impleaded as party.

The amended memo of parties is already on the record as also vakalatnama

signed by the newly impleaded legal representatives.

RSA-1123-2022

The present regular second appeal has been preferred by the plaintiff-appellants against the judgments and decrees passed by both the Courts below dismissing their suit for declaration and permanent injunction.

Brief facts as averred by the plaintiff-appellants are that on 14.06.1960 Kesa s/o Jita and Bhupan s/o Mula sold their 1/8th share of agricultural land to Shahmal s/o Hukma and handed over possession to Shahmal. Shahmal was already owning 1/8th share in the suit land. The original vendors and the vendees are dead. It was alleged that Shahmal remained owner in possession of the area already owned by him as also the area purchased by him on 14.06.1960. However, his name was not recorded in the revenue record of the area purchased by him on 14.06.1960 but only recorded his ownership of the area already owned by him. Based on the wrong entry in the revenue record, Bhupan s/o Mula suffered a decree dated 27.05.1989 in favour of his sons and on that basis mutation was sanctioned in favour of his sons. The sons of Bhupal s/o Mula further sold the suit land vide sale deed dated 12.08.1998. Similarly, Kesa s/o Jita, on the basis of the wrong entry in the revenue record, sold part of the suit land vide sale deed dated 22.04.1999. It is averred that when the plaintiff-appellants learnt about the wrong entry in the revenue record they got it corrected but the same was cancelled by the Collector. It was submitted in the plaint that the decree dated 27.05.1989, the sale deeds dated 12.08.1998 and 22.04.1999 are illegal, null and void and are not binding on the plaintiff-appellants and are liable to be set aside. It was also averred that part of the suit land stood acquired and the defendant-respondents were threatening to collect the

compensation. Based on the said averments the suit for declaration and permanent injunction was filed.

On notice, written statement was filed by the defendant-respondents wherein it was stated that the decree and sale deeds were not challenged within limitation, that the plaintiff-appellants were estopped from challenging the sale deed dated 22.04.1999 since they were parties to the said sale deed, that the suit was barred by limitation. It was denied that Kesa s/o Jita and Bhupan s/o Mula had sold their 1/8th share of agricultural land to Shahmal s/o Hukma vide saledeed dated 14.06.1960 and handed over possession to Shahmal. It was averred that the plaintiff-appellants had already sold their share of the suit land and that they have no share in the suit land.

On the pleadings of the parties, the following issues were framed vide order dated 29.01.2016 :

1. Whether the plaintiff is entitled to a decree of declaration to the effect that plaintiff and proforma defendants no.23 and 24 are the owners in possession of the suit land ? OPP
2. Whether the plaintiff is entitled for a decree of permanent injunction, as prayed for ? OPP
3. Whether the suit filed by plaintiffs is not maintainable in the present form ? OPD
4. Whether plaintiffs has no locus standi to file the present suit ? OPD
5. Whether plaintiffs has no cause of action to file the present suit ? OPD

6. Whether the suit of plaintiff is bad for min-joinder and non-joinder of necessary parties ? OPD

7. Relief.

Vide order dated 22.2.2017, the additional issues were framed :

6-A. Whether the suit of the plaintiff is barred by limitation ? OPD

6-B. Whether the suit of the plaintiff is barred by provision under Order 9 Rule 8 CPC ? OPD

6-C. Whether the plaintiff is not entitled any relief on account of his own act and conduct and is estopped from filing the present suit ? OPD

6-D. Whether the defendant No.22 is bonafide purchaser of the land ? OPD

6-E. Whether present court has no jurisdiction to entertain ? OPD

The Trial Court, vide judgment and decree dated 04.03.2017, dismissed the suit of the plaintiff-appellants holding that a simplicitor suit for declaration without claiming possession was barred. The Trial Court also held that the plaintiff-appellants had not been able to prove the sale deed in favour of Shahmal s/o Hukma. It was further held that the plaintiff-appellants were estopped by their own act and conduct from challenging the decree and sale deeds and that they were estopped from challenging the sale deed dated 22.04.1999 since they themselves had executed it. The suit was also held to be barred by limitation. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellants, which was dismissed vide judgment and decree dated

16.08.2019. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellants has contended that the sale deed in favour of Shahmal s/o Hukma was more than 30 years old and, as such, there was a presumption of truth to its contents. It has further been contended that the suit of the plaintiff-appellants was based on title and was for a declaration and could not be held to be barred by limitation.

I have heard learned counsel for the plaintiff-appellants and perused the paper book.

In the present case the plaintiff-appellants have approached the Court placing reliance on a sale deed dated 14.06.1960. The said deed is in Urdu language and it's certified copy is Ex.P1. The original sale deed and its translated version were not tendered in evidence by the plaintiff-appellants though the same are part of the record. Without the original sale deed being produced and proved and without its translation being produced and proved, no reliance can be placed on the same. The counsel for the plaintiff-appellants has been unable to explain as to how the suit filed in 2011 was within limitation. Counsel for the plaintiff-appellants has also been unable to explain as how the plaintiff-appellants could challenge a sale deed after having executed the same and without disclosing to the Court that they were parties to the sale deed dated 12.04.1999. There is also no explanation forthcoming as to why the plaintiff-appellants waited till 2011 and did not take any action or initiate any proceedings when the decree dated 27.05.1989 was passed or the sale deeds dated 12.08.1998 and 22.04.1999 were executed. Learned counsel for the plaintiff-appellants has simply reiterated the submissions that were advanced before the Courts

below and which submissions were rejected after due and comprehensive consideration.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

31.05.2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No