

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.3241of 2021

Date of decision:08.02.2022

Barfi Devi

...Petitioner

Versus

Satbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudhir Aggarwal, Advocate, for the petitioner.
Mr. Aditya Jain, Advocate, for the respondents.

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The plaintiff, in a suit for declaration with a consequential relief of permanent injunction, is the petitioner herein. She assails the correctness of the order passed by the Civil Judge (Junior Division), Sohna, on 13.10.2021, while dismissing the application under Order 1 Rule 10 CPC to implead Mohit and Rohit sons of Sh. Satbir and Rambir son of Puran Singh as party defendants along with an application of permission to consequentially amend the plaint.

Smt. Birwati wife of Sh.Prem Chand was the owner of the suit property. The plaintiff claims that Smt. Birwati entered into an agreement to sell with the petitioner on 22.11.2010 and subsequently executed a registered sale deed on 16.03.2011, on receipt of Rs.45,00,000/-. The plaintiff further claims that she came to know that Smt. Birwati has fraudulently executed a transfer deed with respect to the suit property in

favour of her nephew (Satbir) vide a release deed dated 04.02.2011. Hence, Smt. Barfi Devi, the plaintiff filed a suit on 30.09.2015.

In response to the notice of the suit, the defendants disclosed that Satbir i.e. defendant no.1 has already executed a release deed in favour of his two sons, namely, Mohit and Rohit, on 23.11.2011. The plaintiff further came to know that the aforesaid Mohit and Rohit sons of Satbir further transferred the suit property in favour of Rambir. Thus, the plaintiff filed the application in question.

The learned trial Court dismissed the application on the ground that the plaintiff came to know of the release deed executed on 23.11.2011 by Sh. Satbir in favour of his two sons in the year 2016 when the written statement was filed by defendant no.1. The Court, thus, concluded that in the year 2021, the plaintiff cannot be permitted to challenge the release deed executed in the year 2011.

This Bench has heard the learned counsels for the parties at length and with their able assistance perused the paper book.

The learned counsel representing the petitioner contends that the release deed executed by Sh. Satbir in favour of his two sons dated 23.11.2011 is consequential and if the release deed executed by Smt. Birwati in favour of Sh. Satbir is held to be illegal, then the subsequent transfer of the property will be of no consequence. He further contends that the subsequent transfers are consequential, therefore, the Court ought to have permitted the plaintiff to amend the plaint to implead the transferees as party defendants and amend the plaint, so as to ensure that all effected parties are heard before the court decides the matter.

Per contra, the learned counsel representing the respondents

contends that the factum of release deed dated 23.11.2011 was disclosed by Sh. Satbir (defendant no.1) in his written statement filed in the year 2016 and therefore, the stand of the plaintiff that she was not in the knowledge of the document is factually incorrect and therefore, the plaintiff is not required to be shown any indulgence.

After having hearing the learned counsels for the parties, this Bench proceeds to decide the matter.

As per Section 31 of the Specific Relief Act, 1963, a party to the document is required to file a suit for annulment/cancellation of the same, if such party wishes to avoid the same. However, if the plaintiff is not a party to the document, he is not required to file a suit for annulment or cancellation thereof. Thus, the concept of challenging a document available under Section 31 of the Specific Relief Act, 1963 is not applicable in the present case. This right is available to the parties who are a party to the document.

Section 34 of the Specific Relief Act, 1963, enables a party to file a suit for declaration that a particular document is not binding on him. Such suit can be filed by a plaintiff who is not a party to the document. In such circumstances, there is no requirement of challenging to a particular document. The learned trial Court has overlooked this aspect. While drawing distinction between a suit for declaration and a suit for annulment of a document in the context of payment of court fee, the Hon'ble Supreme Court in **Suhrid Singh alias Sardool Singh vs. Randhir Singh and others, (2010) 12 SCC 112**, has drawn this distinction. Moreover, a Full Bench of this Court in **Niranjan Kaur vs Nirbigan Kaur, AIR, 1981 P&H 368**, has also noticed the same distinction, although, in the context of liability to pay

advalorem court fee.

Furthermore, the learned counsel representing the petitioner is correct in cotending that Sh. Satbir (defendant no.1) executed a release deed (transfer deed) in favour of his two sons on the strength of the release deed by Smt. Birwati. Sh. Satbir derives his right in the property from Smt. Birwati on the basis of release deed dated 04.02.2011. The aforesaid release deed dated 04.02.2011 has already been challenged in the suit. The validity of the aforesaid document dated 04.02.2011 has already been questioned by the plaintiff by filing the suit. Thus, the subsequent document dated 23.11.2011 and subsequent sale deed 27.05.2019 are only consequential. The sale deed dated 27.05.2019 is also hit by the rule of lis pendens. Thus, the transfer deed dated 27.05.2019 is subservient to the result of the suit.

Moreover, it is important for the Court to grant an opportunity of hearing to the persons who are going to be affected by the result of the suit. Sh. Mohit, Rohit and Rambir shall be adversely effected. Therefore, they are required to be heard before deciding the suit.

In the considered view of the Court, the trial Court wrongly dismissed the application on the ground of limitation. This aspect can be examined by the Court after framing an issue and permitting the parties to lead evidence.

Keeping in view the aforesaid facts, the order dated 13.10.2021, passed by the Civil Judge (Junior Division), Sohna, is set aside. The application filed by the plaintiff (petitioner) is allowed. The plaintiff shall be permitted to file an amended plaint. Thereafter, the Court will proceed with the matter.

Let the amended plaint be filed within a period of one month,

from today.

All the pending miscellaneous applications, if any, are also disposed of.

February 08, 2022
nt

(ANIL KSHETARPAL)
JUDGE

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