

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

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RSA-898-2022(O & M)
Date of Decision: 29.04.2022

Jagbir Singh(deceased) th.LRs

....Appellants

V/S

M/s Ambedkar Education Trust and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rajesh Lamba, Advocate
for the appellants

ANIL KSHETARPAL, J (ORAL)

CM-2854-C-2022

Deficiency in court fee has already been made good. Delay, if any, is condoned.

CM-2853-C-2022

This is an application for condonation of delay of 165 days in re-filing the appeal.

For the reasons stated in the application, the same is allowed. Delay of 165 days in re-filing the appeal is condoned.

RSA-898-2022(O & M)

While assailing the concurrent findings of fact arrived at by the Courts below, the plaintiff through the legal representatives has filed the Regular Second Appeal.

Some facts are required to be noticed:

The plaintiff filed a suit for grant of decree of declaration that the sale deeds dated 23.06.1992 and 13.06.2006 qua his share of the property are

null and void and non est in the eyes of law. He claims to be an owner in possession of the suit land. It has been asserted that when he visited the land, he found defendant No.2 was constructing the building and on an inquiry he came to know that defendant No.1 has sold the property in favour of defendant No.2. He further claimed that the sale deed allegedly executed by the plaintiff along with his sister Balbiro is wrong because Smt.Balbiro died in the year 1964.

The defendants contested the suit and submitted that the plaintiff along with his brother Balbir Singh, mother-Manbhari and sister Balbiro executed the sale deed dated 23.06.1992 on receipt of sale consideration of Rs.2,82,875/-. The entry of aforesaid sale deed was made in the revenue record in favour of defendant No.1, who in turn sold the property to defendant No.2 vide sale deed dated 13.06.2006. Both the courts found that the plaintiff's evidence is not reliable. The plaintiff had executed a General Power of Attorney in favour of his brother Balbir Singh. The plaintiff also failed to prove that Balbiro died 47 years back in the year 1964. The alleged death certificate has been recorded by the authorities on the information of the appellant after a period of 47 years from her alleged death. Both the courts also recorded a finding that in fact Balbiro was also known as Raj Bala, which is evident from the General Power of Attorney dated 12.05.1976.

Heard learned counsel representing the appellant at length and with his able assistance perused the file.

The signatures of the appellant on the sale deed has been proved while examining an expert. Both the courts have found that the conduct of the plaintiff is deplorable. Learned counsel representing the appellant has produced a photocopy of the General Power of Attorney dated 12.05.1976, a

dated 23.06.1992 was executed by Balbir Singh, Jagbir Singh, Manbhari and Balbiro jointly. The sale deed is signed by Balbir Singh and Jagbir Singh in English, whereas it is thumb marked by Manbhari and Balbiro. Thus, the case set up by the plaintiff is without substance. Furthermore, the plaintiff resides only a kilometer away from the agricultural land. The suit has been filed on 22.06.2013. As per Section 3 the Transfer of Property Act, 1882, a person is said to have notice of a fact if the transaction relating to the property has been affected by a registered instrument.

Thus, the first Appellate Court has correctly held that the suit filed by the plaintiff is barred by time. Further the plaintiff is not in possession. He never sought relief of possession. Hence, this suit for mere declaration without seeking relief of possession, in the facts of this case, is not maintainable.

Keeping in view the aforesaid facts, no ground to interfere with the findings recorded by the courts below.

Dismissed.

(ANIL KSHETARPAL)
JUDGE

29.04.2022

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