

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5341-2019 (O&M)

DATE OF DECISION: JULY 29, 2022

SMT. RAJBALA & OTHERS

...APPELLANTS

VERSUS

ISHWAR SINGH & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. ABHINAV SOOD, ADVOCATE
FOR MR. SURENDER SAINI, ADVOCATE
FOR THE APPELLANTS.

MANOJ BAJAJ, J.(ORAL)

CM-15115-C-2019

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 114 days in filing the appeal.

For the reasons mentioned in the application, the delay is condoned.

CM is allowed.

RSA-5341-2019

The appellants-defendants No.1 to 3 are aggrieved against the judgement and decree dated 25.4.2019, passed by the first appellate Court whereby the judgement and decree dated 17.12.2015, passed by the Civil Judge (Jr.Divn.), Sonipat in Civil Suit No.46/1.6.2013/1.7.2013, decreeing the suit of the plaintiffs was affirmed.

The facts in brief, leading to the appeal are that the plaintiffs filed a suit for declaration and permanent injunction by challenging the sale deed dated 8.3.2013 (Ex.P7) executed by their mother Phullo Devi

(defendant No.4) in favour of defendants No.1 to 3 (appellants) on the ground that the suit property comprised in Khewat No.39, Khatoni No.45 and 46, Rectangle and Killa No.39//10/1(2-3), 11/1(2-0), 12/1(2-9), total measuring 6 kanal 12 marla and Rectangle and Killa No.3//8(0-2), 9(2-12), 13/1(2-5), 14/1(0-6), 14/2(1-9), measuring 6 kanal 15 marla, total measuring 13 kanal 6 marla situated within the revenue estate of Mouja Garhi Bala, Tehsil and District Sonapat, was initially owned by their father, namely, Surat Singh and after his death on 13.3.1983, it was inherited by Phullo Devi and the plaintiffs to the extent of 1/16th share each. The revenue record for the year 1987-88 (Ex.P-3) reflected the relevant entry in favour of Phullo Devi as well as the plaintiffs and as per the entry for the year 1992-93 (Ex.P4) only Phullo Devi was shown to be the owner of the suit property, and on the basis of the same, she executed the sale deed dated 8.3.2013 in favour of defendants No.1 to 3. The plaintiffs claimed that Phullo Devi (defendant No.4) had no right, title or interest in respect of the shares of the plaintiffs in the suit property, therefore, she could not have passed on its title further to the defendants No.1 to 3. On this cause of action, the above suit was filed.

The suit was contested by the purchasers-defendants (appellants) by filing written statement, wherein it was pleaded that as per mutation entry, only Phullo Devi is shown as owner of the property and that mutation is in accordance with law, therefore, the defendants who are the *bona fide* purchasers cannot be made to suffer. It was highlighted that defendant Phullo Devi was competent to transfer the property in their favour and further denying all the averments, it was prayed that the suit of the

plaintiffs be dismissed.

After completion of pleadings and framing of issues, the parties adduced their respective evidence and considering the same, the trial Court vide judgement and decree dated 17.12.2015 returned findings in favour of the plaintiffs on the material issues and against the defendants and decreed their suit.

Aggrieved against the said judgement and decree dated 17.12.2015, the defendants preferred first appeal and the same was also dismissed by the first appellate Court through impugned judgement and decree dated 25.4.2019. Hence, this Regular Second Appeal.

Learned counsel for the appellants has argued that the parties are residents of the same village and the mother and sons were well aware about this transaction, and now in connivance with each other, this suit was filed to snatch the title of the suit property which was validly transferred in their favour. According to learned counsel, the sale deed was executed on 8.3.2013 and the suit was filed on 1.6.2013. Learned counsel has argued that the plaintiffs had propounded the Will dated 1.6.1982, but the same was not proved and further the stand of the plaintiffs that their property is ancestral is also not established, as the entry in the jamabandi for the year 1992-93 (Ex.P4) only shows the name of Phullo Devi. Therefore, the findings returned by the trial Court and upheld by the appellate Court deserve to be set aside.

After hearing learned counsel and considering the above arguments, this Court finds that except for the sole entry contained in the jamabandi for the year 1992-93 (Ex-P-4), there is nothing on record to show

that the land was actually owned by Phullo Devi alone. Admittedly, the initial mutation after the demise of Surat Singh shows that it devolved upon defendant No.4 and plaintiffs in equal shares, and the argument that plaintiffs were well aware about this transaction by their mother is without any merit, as even an averment in this regard is missing in the written statement. A perusal of the judgement passed by the Civil Judge (Jr.Divn.), Sonapat as well as the appellate Court shows that the findings returned on the material issues are based upon proper appreciation of evidence.

Resultantly, this Court does not find any merit in the appeal much less involvement of any substantial question of law.

Dismissed.

July 29, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No