IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1049-2019 (O&M)
Decided on : 05.12.2023

Ravel Singh

. . . Appellant(s)

Versus

State of Punjab and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Manoj Singla, Advocate for
Mr. Prateek Sodhi, Advocate, for the appellant(s).

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SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed against the concurrent finding of dismissal of suit, filed by the plaintiff (appellant herein).

2. Plaintiff – Ravel Singh, filed a suit for declaration to the effect that defendants have wrongly and illegally realized an amount of Rs.78,900/- from the plaintiff as stamp duty upon documents No.393 of dated 16.06.2011 registered on 20.06.2011, executed by Joginder Singh s/o Shri Mangal Singh and Sawinder Singh s/o Sh. Chanan Singh, both residents of village Sohian Kalan, Tehsil and District Amritsar.

3. Said issue has been examined by both the learned Courts below. Learned trial Court dismissed the suit primarily on two grounds i.e.;

(i) Under Section 47A of the Indian Stamp Act, 1899, plaintiff has window of 30 days to file an appeal before the Commissioner, but this opportunity has not been availed by the plaintiff;

and

(ii) Suit for declaration has been filed beyond the prescribed period of limitation. Impugned order was passed by the Collector i.e. defendant NO.2, on 17.08.2011, and plaintiff filed suit on 14.10.2014. Limitation period for filing the suit had expired on 16.08.2014.

4. Relevant finding recorded by the learned trial Court in its paragraph No.7, is reproduced as under:-

".............. First point of consideration in that case whether the plaintiff approached the proper authority, the defendant Department withhold sale deed dated 16. 06. 2011 registered on 20.06.2011 is undervalued and thereafter plaintiff started contesting the decision of the defendants and he had submitted to the authorities that he has rightly paid stamp duty as per the price of the property and as per agreement to sell but the defendants had neither listen the genuine request of the plaintiff. The defendant department with hold the sale deed of the plaintiff on the basis of the order passed by Dr Baljit Singh, PCS , ADC-cum-collector on dated 17 August 2011. Plaintiff also placed on file the certified copy of order of collector which is exhibit P7 under section 47-A of Indian Stamp Act.

Section 47-A of Indian Stamp Act of action 47-A(4) any person aggrieved by an order of collector under subsection 2 and 3 may within 30 days from the date of that orde prefer an appeal before the Commissioner and all such appeals shall be heard and disposed of in such a manner as may be prescribed by rules made under this act.

The plaintiff did not approach the proper authority which is the Commissioner. Without approaching the proper authority plaintiff approached Civil Court. Civil Court is not a Appellate Authority under the Indian Stamp Act. The plaintiff has to approach the proper authority prescribed under the

Indian Stamp Act.

The another point of consideration in that case is that if the plaintiff sought declaration in the Civil Court whether he approached within the period of limitation. If the defendant department with hold the sale deed of the plaintiff then the period of limitation starts from the date on which the defendants Department withhold the sale deed of the plaintiff. The order passed by collector on dated 17 August 2011. Plaintiff filed a suit on 14.10.2014, period of limitation file a suit for declaration already been elapsed on 16.08.2014, hence the suit of the plaintiff is barred by limitation. plaintiff also sought permanent injunction but the plaintiff did not place on file any cogent and convincing evidence for the threat given by the defendants department. Hence, these issues decided in favour of defendants and against the plaintiff."

5. Said finding has also been affirmed by the learned First Appellate Court, by giving its findings in paragraphs No.11 & 12, which are also reproduced here-under:-

*"11. Perusal of section 47-A of the Act reveals that the stamp duty is to be paid at the rate, which is prevalent at the time of registration of the document. The Hon'ble Punjab & Haryana High Court in **<u>2008(2)Civil Court Cases page 536(DB) titled as Manoj Kumar Versus State of Haryana &Ors.</u>**, has held that when the sale deed is ordered to be registered on the basis of decree passed by the Court, ostensible sale price as given in the transfer deed is to be accepted by the registering authority. But in the present case registering authority has impounded the sale deed and forwarded the same to the Registrar for taking further action, the sale deed being under valued. Shri Baljit Singh, ADC-cum-Collector vide order dated 17.8.2011 has directed the plaintiff to pay Rs.58,800/- as deficiency of stamp fees and Rs.9810/- as deficiency in the registration fee alongwith interest @ 12%.*

*The plaintiff/appellant has paid this amount. He has not availed the remedy, which is available to him under section 47A(4) of Stamp Act i.e .to file appeal before the Commissioner within 30 days of the passing of the order. Rather he kept on waiting and after more than 3 years, filed the present suit. When the plaintiff has not availed the remedy, which is provided under the Act, then straightway plaintiff cannot file the suit. Even perusal of the judgment of the law laid down in **Manoj Kumar(supra)** reveals that against the order passed by the Collector, appeal was filed before the Commissioner, who dismissed the appeal and thereafter writ to the Hon'ble High Court, was filed. But the plaintiff has not availed the remedy which is available to him under the Act. So plaintiff cannot invoke jurisdiction of the Civil Court without exhausting the remedy available to him under the Act before the different forum. So this suit is not maintainable.*

12. Apart from this, the defendant has taken the specific plea that suit is time barred, filed after 3 years of passing of the order by the Collector, which is under challenge. The order passed by the Collector has been produced on file by the plaintiff as Ex.P7 and perusal of this order reveals that this order was passed on 17.8.2011. As per this order, plaintiff was present when this order was passed. A suit seeking declaration of any right being infringed can be filed within three years from the date of infringment of the civil right of the plaintiff or when infringment of the right came into the knowledge of the plaintiff. The order Ex.P7 was passed on 17.8.2011, in the presence of plaintiff. So plaintiff has to challenge this order within 3 years i.e. before 17.08.2014. But the present suit has been filed by the plaintiff on 14.10.2014. So suit of the plaintiff is time barred also. Hence, there is no illegality in the findings recorded by the trial Court on issues no.1,2,5 and 6. I concur with the findings of the trial Court on these issues."

6. After hearing learned counsel the appellant (plaintiff) at length and perusing the findings recorded by the learned Courts below in the impugned judgments & decree, I do not find any substantial reason to deviate from the view taken by the Courts below.

Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

For the reasons recorded herein-above, the instant appeal *sans* merits, and thus, **dismissed**. The judgment(s) & decree passed by both the Courts below are hereby affirmed.

7. CM-2535-C-2019, filed under Section 5 of the Limitation Act, 1963 read with Order 41 Rule 3-A CPC, for seeking condonation of delay of 273 days in filing the appeal, also stands dismissed, as no satisfactory ground is pleaded therein.

Other pending misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

December 05, 2023
J.Ram

Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: ~~Yes~~/No