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

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Reserved on : 24.03.2023

Date of Decision : 11.04.2023

Shanti Devi through LRs and others

...Appellants

Versus

Dharma Pal through LRs & Ors

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kulvir Narwal, Advocate for the appellants.

ALKA SARIN, J.

CM-11-C-2018

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

For the reasons mentioned in the application, the same is allowed and delay of 81 days in filing the appeal is condoned.

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The present regular second appeal has been preferred by the plaintiff-appellants against the concurrent finding of facts recorded by both the Courts below vide judgments and decrees dated 11.08.2009 and 11.01.2017.

The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for declaration with consequential relief of joint possession seeking a decree of declaration directing defendant-respondent No.2 to refund Rs.20,000/- as value of trees cut by him and for setting aside the judgment and decree dated 30.10.1980 passed in Civil Suit No.52/1979 and for setting aside

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sale deed No.8306 dated 14.03.1985 in favour of defendant No.2, sale deed No.487/1 dated 06.05.1985 in favour of Roshan Lal, sale deed No.1283/1 dated 14.06.1985 in favour of Angoori Devi and sale deed No.1342/1 dated 23.05.2000 in favour of Hukum Chand. Further, a consequential relief of permanent injunction was sought for restraining defendant-respondent No.1 from alienating the suit land in any manner. The plaintiff-appellants set-up a case to the effect that their predecessor-in-interest namely, Phulla, was owner in possession of agricultural land measuring 45 Kanal 4 Marla in Village Uchana, Tehsil and District Karnal. He was an illiterate person and taking advantage of his illiteracy Dharam Pal (now through his LRs) defendant-respondent No.1 got an agreement to sell executed in his favour in the year 1974 and though a sum of Rs.5,000/- was only paid to him but Dharam Pal got the sum of Rs11,500/- scribed in the document. Phulla protested about the same however Dharam Pal had already filed a civil suit for specific performance on 21.8.1974 on the basis of the aforesaid agreement. Phulla died in the year 1977 leaving behind plaintiff No.1 to 7 as his successors and plaintiff No.6 and 7 are sons of Teka @ Teka Chand s/o Phulla, who died in 1979. But in the suit for specific performance the successor of Teka @ Teka Chand were not impleaded. A decree was passed in favour of Dharam Pal on 30.10.1980. An appeal preferred against the said judgment and decree dated 30.10.1980 was dismissed on 12.01.1984. Thereafter, it was alleged that Dharam Pal realised that the decree was not executable and the land was also mortgaged with him though the possession continued to be with the plaintiff-appellants. Thereafter, the plaintiff-appellants and Dharam Pal arrived at a compromise on 13.06.1984 in which it was settled that the plaintiff-appellants would pay a sum of Rs.90,000/- inclusive of the mortgaged amount, earnest money and interest to Dharam Pal on or before 15.09.1984. Hukam Chand

defendant-respondent No.2 stood as security for payment of the aforesaid amount as he was well acquainted with Dharam Pal and was the brother of plaintiff-appellant Puran Chand etc. Since the plaintiff-appellants could not make payment till March 1985, Hukam Chand suggested that they should pay at least half the amount and on this pretext he got sale deed No.8306 dated 14.03.1985 executed in his own favour. He assured that the sum of Rs.45,000/- would be paid to Dharam Pal and a receipt would be delivered to the plaintiff-appellants. Despite repeated requests, the receipt was not issued. The defendant-respondents are stated to have again started pressurising the plaintiff-appellants for payment and thereafter another sale deed No.487/1 dated 06.05.1985 was executed for an amount of Rs.35,000/- in favour of Roshan Lal. Yet again no receipt was issued qua the amount. Thereafter, Hukam Chand is stated to have informed the plaintiff-appellants that Dharam Pal would now charge Rs.1,15,000/- as payment was delayed and therefore yet another sale deed No.1283/1 dated 14.06.1985 in favour of Angoori Devi was executed. Thus, a total amount of Rs.1,15,000/- was entrusted to Hukam Chand out of which Rs.70,000/- was paid by Roshan Lal and Angoori Devi. It was further averred in the plaint that Dharam Pal tried to get the decree dated 30.10.1980 executed twice, in 1984 and 1992, and both times the petition was dismissed. The decree was finally executed in the year 1993. It was further averred that all the sale deeds got executed by Hukam Chand were fraudulent. Defendant-respondent No.1 Dharam Pal filed his written statement raising preliminary objections qua maintainability and locus-standi. It was pleaded that it was the plaintiff-appellants who had been dishonest and fraudulent as they had sold the land without authority to defendant Nos.2, 8 and 9 despite there being a decree for specific performance in his favour. Further, the plea of limitation was also raised. On merits it was admitted that Phulla was the original

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owner of land measuring 45 kanals 4 marlas and that the suit for specific performance had been decreed after being hotly contested by Phulla and that the validity of the suit could not be challenged at this stage when the judgment and decree had attained finality. Further, any collusion with defendant No.2 was also denied. Defendant No.2 filed a separate written statement raising preliminary objections of maintainability, locus-standi and limitation. The sale deeds were stated to have been executed for consideration. It was further averred that he had every right to cut the trees on the land purchased by him. Replications were filed reiterating the averments made in the plaint and controverting the averments made in the written statements.

On the basis of the pleadings of the parties, the following issues were framed by the Trial Court :

1. Whether the civil court decree dated 30.10.1980 passed in civil suit No.52/80 is liable to be declared as null and void, illegal and not binding upon the plaintiff ? OPP
2. Whether the sale deed no.8306/1 dated 14.3.1985 in favour of defendant no.2 is null and void and is liable to be set aside ? OPP
3. Whether the sale deed dated 06.05.1985 No.487/1 in favour of Roshan Lal s/o Dhani Ram r/o Uchana is null and void and is liable to be set aside ? OPP
4. If issue No.3 is proved whether the plaintiff is entitled to refund of amount Rs.35,000/- ? OPP
5. Whether the sale deed no.1283/1 dated 14.6.1985 in favour of Angoori Devi w/o Roshan Lal is liable to be set aside to be set aside being null and void ? OPP

6. If issue No.5 is decided in favour of plaintiff, whether plaintiff is entitled to refund of amount of Rs.35,000/- ?
OPP
7. Whether the sale deed no.1342/1 dated 23.5.2000 in favour of Hukam Chand is liable to be declared as null and void ? OPP
8. Whether the plaintiff is entitled to amount of Rs.20,000/- as price of trees which has been cut unauthorisely by the defendants ? OPP
9. Whether the plaintiff has no locus standi to file the present suit ? OPD
10. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
11. Whether the plaintiff Nos.1 to 7 have committed fraud upon defendant No.1 by selling the land despite decree of specific performance in favour of defendant No.2 ?
OPD
12. Whether the suit is not maintainable ? OPD
13. Whether the plaintiff has no right, title or interest to file the present suit ? OPD
14. Whether the suit is not properly valued for the purposes of court fees and jurisdiction ? OPD
15. Whether the suit is an abuse of process of law ? OPD
16. Whether the suit is time barred ? OPD
17. Whether the suit is bad for mis-joinder and non-joinder of necessary parties ? OPD

18. Whether the suit is vague and indefinite ? OPD

19. Relief.

The Trial Court vide judgment and decree dated 11.08.2009 dismissed the suit with special costs holding it to be frivolous litigation. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed vide judgment and decree dated 11.01.2017. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellants would contend that the sale deeds were fraudulent transactions and further the suit itself was bad inasmuch as taking advantage of the illiteracy of Phulla the agreement to sell was entered into. Learned counsel for the plaintiff-appellants would further contend that the legal representatives of Teka Ram were not impleaded as a party and the hence the judgment and decree dated 30.10.1980 was bad in law.

Heard.

In the present case the judgment and decree dated 30.10.1980 (Ex.P/3) was challenged in appeal which appeal was dismissed vide judgment and decree dated 12.01.1984. The plaintiff-appellants chose not to file any further appeal and the judgment and decree attained finality. All the pleas now sought to be raised were all available to the plaintiff-appellants at the time of filing of the appeal and could have been raised in the appeal. Admittedly, even the decree stood executed in the year 1993. It has been argued by the learned counsel that the judgment and decree were passed on 30.10.1980 and hence could not have been executed in the year 1993. Both the Courts below have concurrently found that the execution was filed within the time prescribed by law i.e. 12 years and hence the execution could not be held to be barred by limitation. Learned counsel for the plaintiff-appellants has not been able to convince this Court otherwise.

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Qua the sale deeds which have been challenge in the present suit, the same were executed on 14.03.1985, 06.05.1985 and 14.05.1985 while the present suit was filed on 26.08.2000 and hence both the Courts below have concurrently found that the challenge to the said sale deeds was barred by limitation. Though sale deed dated 23.05.2000 has also been challenged on the ground of fraud, however, the plaintiff-appellants have woefully failed to show any fraud which was played by the defendant-respondents. Even before this Court, learned counsel for the plaintiff-appellants is not in a position to show from the evidence available on the record the fraud which is alleged to have been played.

In view of the discussion above and in view of the concurrent findings of fact returned by both the Courts below, I do not find any merit in the present regular second appeal. No question of law, much less any substantial question of law, arises for determination by this Court in the present appeal which is wholly devoid of any merit. The same is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

11.04.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO