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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1044-2023 (O&M)

Date of decision : 08.01.2024

Ganpat Singh

... Appellant(s)

Versus

Omwati and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Umesh Kumar Kanwar, Advocate for the appellant.

Mr. A.K. Ranolia, Advocate
for the caveator-respondent Nos.5 and 6.

ALKA SARIN, J.

CM-4013-C-2023

This is an application for condonation of delay of 28 days in
refiling the appeal.

For the reasons stated in the application, delay of 28 days in
refiling the appeal is condoned. CM stands disposed off.

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1. The present regular second appeal has been preferred by the
plaintiff-appellant against the concurrent findings of both the Courts below.
2. Brief facts relevant to the present *lis* are that the plaintiff-
appellant filed a suit for declaration and permanent injunction averring
therein that he was the owner in possession of the suit land to the extent of

1/3rd share. Declaration was also sought to the effect that the sale deeds dated 16.06.2006 and 29.10.2007 executed by defendant-respondent No.1 in favour of defendant-respondent Nos.2 to 4 and sale deed dated 03.08.2018 executed by defendant-respondent Nos.2 to 4 in favour of defendant-respondent Nos.5 and 6, were illegal, null and void. The case as set up by the plaintiff-appellant was that his father had purchased 1/3rd share in land as detailed in para 3 of the plaint. The said share was purchased in the suit property in the name of the plaintiff-appellant and the husband of defendant-respondent No.1 in the year 1964-65. It was further the case set up that at the time of purchase of the land, both the brothers were minors. In the year 1980 defendant-respondent No.1 got married to one Ram Kanwar, the brother of the plaintiff-appellant, and within six months of the marriage he died in a road accident. It was further the case set up that after the death of her husband, defendant-respondent No.1 left her matrimonial home and that she relinquished her share in favour of the plaintiff-appellant. However, in 1982 a mutation of inheritance qua the land belonging to Ram Kanwar was wrongly sanctioned in favour of defendant-respondent No.1 and she was recorded as a co-sharer to the extent of 1/6th share in the suit property. It was further averred that he was not aware of the mutation and it is only after retirement from the Army when he came back he came to know about the mutation dated 22.01.1982 in favour of defendant-respondent No.1. Separate written statements were filed by defendant-respondent No.1, defendant-respondent Nos.2 to 4 and defendant-respondent Nos.5 and 6, who contested the suit on the ground of maintainability, cause of action and *locus standi*. Defendant-respondent No.1 took the stand that she stayed at

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her matrimonial house even after the death of her husband and after inheritance of the suit property from her husband, she cultivated the same. However, she remarried under compelling circumstances. It was further averred in the written statement that the husband of defendant-respondent No.1 was the absolute owner in possession to the extent of 1/6th share and on the demise of her husband, she had inherited the said property and mutation No.1879 was duly sanctioned in her favour in 1982. It was further averred that being owner in possession, she executed the sale deeds dated 16.06.2006 and 29.10.2007. Remaining defendant-respondent Nos.2 to 6 took the stand that they were *bonafide* purchasers for valuable consideration. On the basis of the pleadings, the following issues were framed :

1. Whether the plaintiff is entitled to the Decree for declaration as prayed for?OPP
2. Whether the plaintiff is entitled to a Decree for permanent injunction as prayed for? OPD
3. Whether the present suit is not maintainable? OPD
4. Whether the plaintiff is estopped from filing the present suit by his own acts, conducts, admissions, commissions, acquiescence, delay and latches etc? OPD
5. Whether the present suit is bad for misjoinder and nonjoinder of the necessary parties? OPD
6. Whether the present suit is barred by limitation? OPD
7. Relief.

3. The parties led their evidence and on the basis of the pleadings

and evidence, the Trial Court dismissed the suit of the plaintiff-appellant holding that defendant-respondent No.1 had become owner in joint possession of the suit property after the death of her husband in 1980 on the basis of the mutation in 1982 and hence was capable to execute the sale deed in favour of defendant-respondent Nos.2 to 4. Defendant-respondent Nos.2 to 4 were held to be *bonafide* purchasers for valuable consideration, hence they were competent to sell the property further to defendant-respondent Nos.5 and 6, who were also held to be *bonafide* purchasers. The suit was also held to be hopelessly time-barred. Aggrieved by the judgment and decree dated 20.12.2021, an appeal was preferred which also met with the same fate. Hence, the present regular second appeal.

4. The only argument raised by the learned counsel for the plaintiff-appellant is that defendant-respondent No.1 had relinquished her share in the suit property by way of an oral relinquishment deed and that she had no right title or interest in the land and hence was not competent to further sell the land.

5. *Per contra* the learned counsel appearing on behalf of the caveator-respondent Nos.5 and 6 has contended that there is not an iota of evidence on the record to even remotely suggest that defendant-respondent No.1 had ever relinquished her share in the property in favour of the plaintiff-appellant. It is further the contention of the learned counsel that defendant-respondent No.1 was the absolute owner having inherited the suit property after the death of her husband and hence had every right to sell the property.

6. I have heard the learned counsel for the parties.

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7. In the present case the only argument raised by the learned counsel for the plaintiff-appellant is that the property had been relinquished by way of an oral relinquishment deed by defendant-respondent No.1 in favour of the plaintiff-appellant. However, it has concurrently been found by both the Courts below that there is not an iota of evidence on the record to show that there was any relinquishment of the right in the property in favour of the plaintiff-appellant by the defendant-respondent No.1. To the contrary, defendant-respondent No.1 had been held to be absolute owner and hence she had every right to sell the property. That being so and in the absence of any evidence, the present appeal must necessarily fail. Further, it has concurrently been held by the Courts below that the suit is hopelessly barred by limitation as it was filed 24 years after the sanction of the mutation.

8. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal which is wholly devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.01.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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