

CR No.3653 of 2022
CR No.4066 of 2022

2024.PHHC.164213



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

Date of decision : 05.11.2024

CR No.3653 of 2022

Kartar Singh Tomar and anotherPetitioners

Versus

Ashima Anand and others ...Respondents

CR No.4066 of 2022

Kartar Singh Tomar and anotherPetitioners

Versus

Ashima Anand and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : None for the petitioners in CR-3653-2022.

Mr. Ravi Sharma, Advocate
for the petitioners in CR-4066-2022.

Mr. Ramesh Kumar Bansal, Advocate
for respondents No.1 and 2 (in both cases)

Mr. Aneesh Chopra, Advocate for
Mr. Shekhar Verma, Advocate for respondent No.3.

PANKAJ JAIN, J. (ORAL)

Challenge in these revisions petitions is to the order dated 21st of April, 2022 passed by Additional Civil Judge (Senior Division), Panchkula whereby application filed by defendants No. 1 and 3 under Order VII Rule 11 read with Section 151 Civil Procedure Code, 1908 seeking rejection of plaint stands dismissed.



2. For convenience and to avoid the confusion, the parties hereinafter are referred to by their original position in the suit i.e. the petitioners as the defendants and the respondents as the plaintiffs.

3. Plaintiffs filed suit for declaration to the effect that family settlement executed *inter se* between the defendants is not binding upon their rights *qua* the house in dispute. Transfer of 50% share in the said property in favour of defendant No.2 on the basis of family settlement dated 30th of November, 2018 was fraudulent, illegal, null and void and that judgment and decree dated 23rd of December, 2016 passed in Civil Suit titled as 'Kartar Singh and others vs. Pankaj Tomar and others' and all transactions made by defendant No.1 prior to the revocation of GPA by defendant No.2 be held to be valid. Further prayer was made seeking decree of possession by way of specific performance of agreement to sell dated 29th of September, 2014 in respect of 20% share in the suit property and in the alternate decree of recovery of Rs.87.00 lacs was prayed for.

4. In short, the suit of the plaintiffs was based upon agreement to sell dated 29th of September, 2014 executed by defendants No.1 and 3 in favour of plaintiff No.2 claiming that defendant No.1 acting as GPA of defendant No.3 and on his behalf, executed agreement to sell dated 29th of September, 2014 in favour of plaintiffs in respect of 20% of the suit property. The GPA even though irrevocable, was wrongly revoked vide revocation deed dated 23rd of April, 2012. On the basis of decree dated 26th of February, 2015, transfer of 50% share in favour of defendants No.1 and 3



has been declared as null and void which is not binding upon the rights of the plaintiffs accruing on the basis of agreement to sell executed by defendants No.1 and 3 prior to the passing of the decree.

5. Defendant No.1 filed present application under Order VII Rule 11 CPC again acting as GPA of defendant No.3 as well. It was claimed that the plaintiffs being not family members, have no right to challenge the family settlement dated 30th of September, 2018. There was no cause of action in favour of the plaintiffs to file the suit. It was further claimed that the suit for specific performance being barred by limitation, the plaint deserves to be rejected. In addition, counsel for the petitioners while arguing the matter submitted that there is no privity of contract between plaintiff No.1 and the defendants as she was never party to the agreement to sell.

6. Trial Court vide impugned order rejected the claim of the defendants for rejection of plaint for want of Court Fee holding that plaintiffs are not required to pay *ad valorem* Court Fee w.r.t. total subject matter of family settlement. They was only required to pay Court Fee w.r.t. the relief of possession by way of specific performance which they already have paid and so far as damages are concerned, the same are yet to be assessed by the Court and the Court Fee payable by the plaintiffs will be assessed by the Court at the time of final disbursal of the suit. On the issue of limitation, Trial Court found that the agreement to sell propounded by the plaintiffs specifically provided that the civil suit was pending. The suit was



decreed on 26th of February, 2015. Gift deed in favour of defendant No.1 and 3 was held to be null and void. Defendant No.1 and 3 thereafter, preferred appeal. The appeal was allowed vide judgment and decree dated 23rd of December, 2016. Defendant No.2 filed RSA No.916 of 2017. The said RSA was dismissed as withdrawn on 3rd of April, 2019. Thus, the present suit instituted on 12th of February, 2021 cannot be held to be barred by limitation.

7. After arguing for some time, counsel for the petitioners does not dispute that the issue of violation of the suit and payment of *ad valorem* Court Fee has been rightly dealt by the Trial Court as the plaintiffs have indeed affixed the Court Fee on the relief claimed in form of decree of specific performance. Likewise the plea w.r.t. limitation being matter of record, counsel for the defendants/petitioners is not in position to dispute that the agreement to sell executed between the parties, on the basis of which suit has been filed by the plaintiffs, was made subject to *lis pending inter se* between defendants No.1 and 3 against defendant No.2. The said *lis* was finally decided on 3rd of April, 2019 and, thus, the present suit having been instituted on 12th of February, 2021 cannot be said to be beyond limitation.

8. So far as the objection of the petitioner w.r.t. misjoinder of parties *qua* plaintiff No.1 is concerned, the same has been fairly conceded by counsel representing the plaintiffs. There being no privity of contract between plaintiff No.1 and defendants No.1 and 3, plaintiff No.1 ought not have been impleaded as party.



9. Counsel for the plaintiffs submits that the plaintiffs shall make statement before the Trial Court and shall get the name of the plaintiff No.1 deleted from the arraign of the parties.
10. In view of above, the instant revision petitions are disposed off.
11. Objections raised by defendants w.r.t. maintainability of the suit on the plea of limitation as well as affixation of *ad valorem* Court Fee, cannot be sustained. Thus, no fault can be found with the findings recorded by the Trial Court. So far as misjoinder of plaintiff No.1 is concerned, the plaintiffs shall remain bound by the statement made by their counsel before this Court and shall get name of plaintiff No.1 deleted from the arraign of parties by making statement before the Trial Court.
12. Ordered accordingly.
13. A copy of this order be kept on the file of other connected case.

November 05, 2024
Dpr

(Pankaj Jain)
Judge

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