

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

RSA No.4523 of 2010

Date of Decision: 31.08.2016

Gopal Dass

... Appellant

Vs.

Rishi Pal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. Keshav Pratap Singh, Advocate
for the appellant.

Amol Rattan Singh, J.

These are three appeals filed by the plaintiff against different respondents, arising out of three different suits filed by him before the learned Additional Civil Judge (Senior Division), Yamuna Nagar, in which he sought decrees of declaration that he is a co-owner of the land as detailed in the plaints, by first declaring that the sale deeds dated 17.09.1966 are illegal, null and void and not binding upon the rights of the appellant-plaintiff, and do not create any right in the respondent-defendants.

The suits and the first appeals filed by him having been dismissed, these second appeals have been filed before this Court.

Upon specific query to learned counsel for the appellant, he has submitted that three different suits were filed in view of the fact that the suit

land had been alienated to different persons (the respondents-defendants in these appeals/their predecessors-in-interest), though all three sale deeds were executed on the same date, i.e. 17.09.1966.

Consequently, it has been submitted that other than the fact that the three different sale deeds were executed in respect of three different parcels of land, however, the facts otherwise remain the same in all three appeals. Hence, they have been taken up together and are virtually being dealt with as a single appeal by this judgment, though obviously three different decree sheets would eventually need to be drawn up.

2. The case of the plaintiff is that sale deeds were executed qua the land standing in the name of the plaintiff, by his grand-father Raghubir Singh, in favour of the respondents-defendants in these three appeals, on 17.09.1966, at a time when the plaintiff was about 12 years old, having been born on 07.11.1954.

It was contended that in the absence of any permission taken from a Court of competent jurisdiction, prior to selling the land owned by a minor, the sale deed was void *ab initio* and the plaintiff therefore, was to be declared the lawful owner of the suit land.

He further sought the consequential relief of possession of the suit land and permanent injunction against the defendants qua the suit property, restraining them from alienating it in any manner.

3. In the written statements filed by the defendants, preliminary objections with regard to the maintainability of the suits, locus standi of the plaintiff, estoppel, limitation and non-joinder of necessary

parties were taken, further stating on merit that Raghbir Singh was duly authorised to execute the sale deed and as such, the transfer of the land to the defendants/their predecessors-in-interest, was perfectly legal and valid. The ownership of the plaintiff of the suit land, prior to the sale, was however, accepted.

It was further contended by the defendants that the plaintiff was fully aware of the sale deed from the very beginning, as a notice was issued by the revenue authorities before sanctioning of the mutation in favour of the defendants and that earlier also, a suit had been filed by the plaintiff, titled as Gopal Dass versus Surta, in the year 1986, through which the plaintiff had complete knowledge about the sale deed in question at least since 1986, though it was contended that such knowledge was with the plaintiff even prior to that date.

4. Upon the aforesaid pleadings, the following issues were framed by the learned Additional Civil Judge:-

- “1. Whether the plaintiff is owner of the suit property as alleged? OPP
2. Whether the sale deed dated 17.09.1966 is wrong, illegal, null and void and liable to be set aside as alleged? OPP
3. If the above issues are proved, whether the plaintiff is entitled for possession of the suit property? OPP
4. Whether the plaintiff is entitled for relief of permanent injunction sought? OPP
5. Whether the suit is time barred? OPD
6. Whether this court has no jurisdiction to try and entertain the present suit? OPD
7. Whether the suit is not maintainable and liable to be

dismissed with special costs? OPD

8. Relief.”

By way of evidence, the plaintiff examined himself as PW1 and tendered the following documents in evidence:-

“Ex.P1 Copy of Birth Register of the Committee
Ex.P1 Hindi Translation of Ex.P1
Ex.P3 Copy of sale deed dated 17.9.1966
Ex.P4 Copy of mutation
Ex.P5 Copy of *jamabandi* for the year 1997-78
Ex.P6 Copy of *jamabandi* for the year 1997-98.

The defendant examined Shyam Lal (present respondent No.2, son of defendant Pannu Ram) as DW1 and relied upon the following documents:-

“Ex.D1 Copy of Power of Attorney
Ex.D2 Copy of amended plaint
Ex.D3 Copy of decree sheet dated 17.12.1991
Ex.D4 Copy of judgment dated 17.12.1991
Ex.D5 Copy of Gift Deed dated 30.6.1958
Ex.D6 Copy of judgment dated 7.1.1994
Ex.D7 Copy of decree sheet dated 7.1.1994
Mark A Copy of *jamabandi* for the years 1954-55
Mark B Copy of *jamabandi* for the year 1954-55
Mark C Copy of mutation

Mark D Copy of *jamabandi* for the year 1958-1959

Mark E Copy of *jamabandi* for the year 1958-59”

It needs to be noticed that though the these three appeals arise out of three separate suits as already stated, however, it is seen that even in the judgments of the learned Additional Civil Judge, Jagadhri, in all three cases, the evidence led by both parties is shown to be the same, even though the defendants in the three suits were not the same. However, learned counsel for the appellant has specifically stated, as also already noticed, that since in the three suits, identical sale deeds dated 17.09.1966 were challenged, no other evidence was led except that which was shown to be common evidence on behalf of the defendants in all the three suits also. Consequently, nothing further need be said by this Court in this regard.

5. Upon appraisal of the evidence and the pleadings and arguments, the learned Civil Judge first discussed as to whether the sale deed dated 17.09.1966 was a void or voidable document. In this regard, the Court considered the provisions of Sections 4, 6, 8 and 11 of The Hindu Minority & Guardianship Act, 1956, which are reproduced hereinunder:-

“4 . Definitions.- In this Act,-

- (a) "minor" means a person who has not completed the age of eighteen years;
- (b) "guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes-
 - (i) a natural guardian,
 - (ii) a guardian appointed by the will of the minor's father or mother,
 - (iii) a guardian appointed or declared by a court, and
 - (iv) a person empowered to act as such by or under any enactment relating to any court of wards;

(c) "natural guardian" means any of the guardians mentioned in section 6.”

“6 . Natural guardians of a Hindu minor.- The natural guardians of a Hindu, minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl-the mother, and after her, the father;

(c) in the case of a married girl-the husband;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)

Explanation.- In this section, the expressions 'father' and 'mother' do not include a step-father and a step-mother.”

“8 . Powers of natural guardian.- (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-

section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular-

- (a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof.
- (b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and
- (c) an appeal lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, "Court" means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate."

"11. *De facto* guardian not to deal with minor's property.- After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor."

6. On considering the aforesaid provisions, it was held by the trial Court that during the life time of the father of the appellant-plaintiff, he would have been his natural guardian other than his mother and therefore, his grand-father, Raghubir Singh, could only, at best, be his *de facto* guardian, who was not actually entitled to deal with the property of the minor, even if he was taken to be the Manager of the property.

Hence, it was held that whether or not there existed any legal necessity to sell the land, Raghubir Singh in any case was not authorised to sell it. Consequently, it was held the sale deed was actually a void

instrument.

7. The next question which was dealt with by the learned Court, was that despite the instrument being void *ab initio*, would the provisions of Limitation Act apply to the transaction or not.

To arrive at a conclusion on this issue, first, the judgment of the Supreme Court in **Madhe Gowda v. Anke Gowda** AIR 2002 SC 215, was referred to, wherein it was held that an instrument which is void, in the case of a minor, can be repudiated at any time by him upon attaining majority and that such repudiation would be valid.

However, a subsequent judgment in which the issue of limitation in the case of a void instrument was discussed in detail, i.e. **Prem Singh v. Birbal** (2006) 5 SCC 353, was then referred to by the learned Civil Judge.

Paragraphs 11,12, 20 and 28 of the said judgment (SCC citation) are relevant, of which at this stage, only the last is being reproduced hereinunder:-

“28. If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed there under. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation by the trial court.”

8. Applying the aforesaid principle, the learned Civil Judge found that the plaintiff had attained the majority in the year 1972 and at the time of

sanction of the mutation, on the basis of the sale deed in the year 1976 (a copy of the mutation being Ex.P4 before the Court), he was very much a major. The plaintiff also admitted the possession of the defendant over the suit property but showed ignorance about knowledge of the sale deeds till, allegedly, arguments were addressed in the suit filed by him against one Surta. Thus, as per the appellant-plaintiff, he gained knowledge of the sale deeds and mutation only on 19.10.2001. Thereafter, he filed the suit (in the present *lis*) on 02.02.2002, by which time he was more than 47 years of age. By that time, the revenue record had also been updated in favour of the defendant many times since 1976 and the parties to the proceedings had otherwise also been in litigation for many years. Hence, it was held that it was not believable that the plaintiff came to know of the sale deeds only in the year 2001.

Consequently, it was held that he having knowledge of the sale deeds right from the beginning, a suit seeking a declaration would be barred by limitation, such limitation being three years.

9. An argument was raised on behalf of the plaintiff, that since possession had been sought by him and the limitation to seek possession of the suit property, based upon title in such property, is 12 years from the time that the defendant claims adverse possession thereof, in the present case, there would be no limitation, as the defendant had failed to prove any such adverse possession.

This argument was rejected by the learned trial Court on the ground that in the present case, though a decree of possession was prayed

for, but before such possession could be granted to him, he was to get the instruments set aside, on the basis of which the title would revert to the plaintiff, (thereby enabling him to seek possession of the property).

10. Yet further, it was held that the plaintiff had sought a decree of possession of khasra No.76//2 but a perusal of Ex.D5 revealed that the said khasra number was gifted to the plaintiff, which gift deed had been declared to be null and void by a judgment and decree (exhibited as Exs.D4 and D3 respectively) dated 17.12.1991. Thus, when the instrument by which the land falling in the said khasra number came to be in the ownership of the plaintiff, had itself been declared to be null and void, the question of possession of the suit property on the basis of title, did not in any case arise in the first place.

Thus, holding as above, the suits of the plaintiff were dismissed.

11. In the first appeal filed by him before the learned Additional District Judge, Yamuna Nagar, that Court considered the entire question of limitation again, including the aforesaid two judgments, as also another judgment of this Court in **Swarna Devi and others v. Mahant Nath Ram Sharma** [2005 (2) RCR (Civil) 358], wherein also it was held, in effect, that when a suit is filed on the basis of title, though no limitation is prescribed, in such a situation limitation would apply.

Thus, in the present *lis*, the first appellate Court upheld the finding of the lower Court to the effect that though the instruments of sale dated 17.09.1966 were void instruments, but with the suits having been filed in the year 2002, they were beyond limitation, in terms of Articles 59 and 113 of the Schedule to the Limitation Act, 1963, as the repudiation of the

sale deeds was not within three years of the appellant-plaintiff having attained majority.

The contention that the plaintiff came into knowledge of the sale deeds only on 18.10.2001 was reiterated by the lower appellate Court also, discussing the testimony of the plaintiff himself, wherein he stated that his knowledge came during the arguments in the case titled as Gopal Dass v. Surta, as there was a reference to the sale deeds in question. It was held that though he had stated in the pleadings that he came to know on the date of the decision of that case on 18.10.2001, he also admitted that in that case there was no reference to the land in question. Further, he failed to place on record the plaint as well as the judgment in that suit and consequently, the learned lower Court took an adverse inference against him, that these documents were specifically withheld as they did not support his case.

Yet further, it was held that when the mutation was entered in 1976, and the defendants had been in possession of the suit land right since 1966, an inference had to be drawn that he knew of the sale deeds and the possession of the suit land by the defendants, well before the time that he actually filed the suits, at the age of 47 years and 3 months, well beyond the period of limitation for seeking a declaration of any kind.

Consequently, even the first appeal was dismissed.

12. Before this Court, Mr. K.P. Singh, learned counsel for the appellant, had initially sought time on a previous date of hearing, to place on record the cross-examination of the plaintiff in the other suit, i.e. in Gopal Dass versus Surta. However, no such application was ever filed even to lead

additional evidence in that regard.

Be that as it may, though I agree that the argument raised before the learned Courts below was correct, to the effect that there is no limitation to seek possession of immovable property on the basis of the title of a plaintiff, unless the defendant proves that his possession was adverse to the plaintiff for more than 12 years, and in this case there was no such plea by the defendant, however, I agree with the reasoning given by the learned Courts below, to the effect that before possession could have been claimed by the appellant-plaintiff on the basis of his title to the suit land, the sale deeds dated 17.09.1966 had to be declared to be null and void, for the title to revert back to the plaintiff, and for him to seek possession on the basis of such title.

13. Again undoubtedly, the instruments of sale being null and void *ab initio*, the sale having been executed by an incompetent person, of the property of a minor, by that rationale, the sale deed would be deemed to be void. However, it cannot be lost sight of that the sale deeds in question are of the year 1966, in favour of the defendants, who by way of those sale deeds had been the owners of the property for more than 35 years, even on the date of the filing of the suits. Thus, a vested right obviously accrued in the defendants and therefore, even the validity of such instruments needed to be challenged within reasonable time by the minor.

With the minor not having repudiated the agreement within three years from the date of his attaining majority, i.e. by 06.11.1975 (he having attained majority on 07.11.1972), suits filed in the month of February

2002 were, in the opinion of this Court also, wholly and completely barred by limitation. It is also wholly unbelievable, as has been rightly held by the Courts below, that even though the mutations were sanctioned in the year 1976 in favour of the defendant and thereafter the revenue records (including records of rights) continued to reflect the name of the defendants, and the appellant otherwise was admittedly in litigation of all kinds, that he would not have come to know of a basic fact of transfer of his land, for a period of 29 years after he attained majority.

Hence, I see no error in the findings of the Courts below.

14. Though the lower appellate Court had not discussed that part, however, the finding of the learned Civil Judge to the effect that as regards khasra no.72//2, the gift deed by which that khasra number was transferred in favour of the appellant in 1958, had itself been declared to be a void gift deed by an earlier judgment in 1991 (exhibited by the defendant), at least qua that khasra number, in any case even the question of possession on the basis of title would not arise in the first place.

However, of course, the suit land in these 3 appeals does not comprise only of the land contained in that khasra number, but in various khasra numbers, and hence, the gift deed in favour of appellant, in respect of land falling in one specific khasra number having been declared to be void, would not affect the rest of the suit land.

Even so, for the reason already discussed, that the suits having been filed too far beyond the date of majority (29 years), in my opinion, the judgment of the hon'ble Supreme Court in *Prem Singhs'* case (supra) relied

upon by the Courts below, would apply wholly and completely to facts of these cases, and suits instituted in the year 2002, seeking a declaration that the sale deed dated 17.09.1966, was void *ab initio*, were suits filed wholly beyond limitation.

Consequently, finding no merit in these appeals, they are dismissed *in limine*, with no order as to costs.

August 31, 2016

dinesh

**(AMOL RATTAN SINGH)
JUDGE**

