
(2012) 03 P&H CK 0479
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5313 of 2009

Kashmiri Lal and Others

APPELLANT

Vs

Dushyant Kumar and Another

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 03 P&H CK 0479

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : B.R Mahajan, for the Appellant; Ashwani Talwar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Legal representatives of original defendant Hardayal have filed this revision petition under Article 227 of the Constitution of India impugning order dated 19.8.2009, Annexure P/1 passed by learned Civil Judge (Junior Division), Hissar thereby dismissing application Annexure P/4 moved by petitioners for treating issue relating to limitation as preliminary issue. Respondent No. 1 - plaintiff has filed suit assailing sale deed dated 28.3.1980. The suit was filed on 10.8.2005 i.e. more than 25 years after the execution of the impugned sale deed. In order to bring the suit within limitation, as usual, the plaintiff pleaded that the impugned sale deed came to his knowledge in January, 2004 only. The petitioners prayed that issue relating to limitation be treated as preliminary issue. The said prayer of the petitioners has been declined by learned trial court vide order Annexure P/1 which is under challenge in this revision petition.

2. I have heard Learned Counsel for the parties and perused the case file.

3. Counsel for the petitioners contended that issue relating to limitation should be treated as preliminary issue even if it requires some evidence and not detailed

evidence. Reliance in support of this contention has been placed on three judgments of this Court namely Jagdev Singh vs. Sardarni Prem Parkash Kaur, 2002 (2) RCR (Civil) 783; M/s Modern Food Industries (India) Ltd. vs. Mukerian Papers Limited and another, 2003 (3) PLR 150 and Miss Meera Sharma vs. Jagjit Singh, 2007 (2) RCR (Civil) 44. It was also contended that prima facie the suit is patently barred by limitation having been filed more than 25 years after the date of the impugned sale deed.

4. Counsel for respondent No. 1 - plaintiff contended that substantial evidence of respondent No. 1 - plaintiff has already been recorded and therefore, the suit itself can be finally disposed of.

5. I have carefully considered the rival contentions. There is force in the contention of counsel for the petitioners. In view of judgments in the cases of Jagdev Singh, M/s Modern Food Industries (India) Ltd and Miss Meera Sharma (supra), issues relating to jurisdiction, limitation, maintainability, res judicata should be treated as preliminary issue even if some formal evidence is required. In the instant case, only evidence to be led by the plaintiff on the issue of limitation would be regarding date of his knowledge of the sale deed. Consequently, there is sufficient ground to treat issue of limitation as preliminary issue because the suit has been filed more than 25 years after the date of sale deed under challenge. For the reasons aforesaid, I find that the impugned order Annexure P/1 passed by the trial court is illegal and unsustainable and suffers from jurisdictional error because the trial court refused to exercise the jurisdiction which vested in it by not treating the issue relating to limitation as preliminary issue. Accordingly, the instant revision petition is allowed. Impugned order Annexure P/1 passed by the trial court is set aside. Application Annexure P/4 filed by the petitioners is allowed and trial court is directed to treat issue relating to limitation as preliminary issue and to decide the same in accordance with law.