

(2013) 12 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3271 of 1987 (O and M)

Malla Singh (deceased) through LRs. and Others

APPELLANT

Vs

Smt. Gurbachan Kaur and Others

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0092

Hon'ble Judges : Rajan Gupta, J

Bench : Single Bench

Advocate : M.L. Sarin and Mr. Nitin Sarin, for the Appellant; G.S. Virk, Advocate for Mr. G.S. Nagra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajan Gupta, J.—Present appeal has been preferred to impugn findings of two courts below on the ground that same are perverse and based on misappreciation of evidence. Plaintiffs (appellants herein) filed a suit for declaration to the effect that they were jointly owners to the extent of 1/2 share of land measuring 26 Kanals 15 Marlas, situated in village Bhet, District Kapurthala as per jamabandi for the year 1978-79. One Nanda was owner of the said land. After his death his two sons namely, Santa Singh and Banta Singh became owners thereof in equal shares. Santa Singh died leaving behind his two heirs i.e. Gurbachan Kaur daughter and Piara Singh son who equally succeeded to his share. Piara Singh sold his share to one person which was got pre-empted by Gurbachan Kaur who became owner of the share of Piara Singh. During life time of Santa Singh and Banta Singh, they continued transferring their share in favour of third person but in the revenue record due to similarity in their names, sales were not recorded properly but possession of the heirs and of the transferee were not disturbed. Therefore, they remained ignorant of the sale effected by Banta Singh. By virtue of three sale deeds effected by defendant No. 1 Gurbachan Kaur in favour of plaintiffs No. 1 to 3, 5/23 share was transferred to plaintiff No. 1 and 5/23 share to plaintiffs No. 2 and 3 in equal shares and by

way of third sale deed 27/39 share was sold by Gurbachan Kaur to plaintiff No. 2. Plaintiffs came to know in January, 1984 that their share had not been properly recorded in the revenue record and thus, they filed the instant suit. Suit was resisted by the defendants No. 2 to 10. Defendant No. 1, however, admitted the claim of the plaintiffs. Defendants No. 2 to 10 in their written statement raised certain preliminary objections and averred that defendant No. 2 had already got his share separated by partition. Plaintiffs had no share in Khewat No. 31 and only defendants No. 2 to 10 are co-owners in possession of the same. Plaintiffs and the defendants had no joint Khata. They pleaded that suit was barred by limitation and bad for non-joinder of necessary parties. They further averred that Gurbachan Kaur and Piara Singh had already sold the land bearing Khasra Nos. 42 & 51 to Joginder Singh and Milkha Singh and Banta Singh sold land bearing Khasra No. 168 and 177 to Dharam Singh and Arjan Singh. Thus, Gurbachan Kaur had been left with no share in the said Khasra numbers to sell to the plaintiffs. Banta Singh sold his share in Khasra Nos. 169 and 171 to Mohan Singh who got his share separated through partition. So, they are bonafide purchasers for consideration. Other averments were also denied by the defendants. The trial court dismissed the suit on ground of limitation and maintainability of the suit. The plaintiffs failed to prove that they were owners to the extent of 1/2 share in the suit land. Findings were affirmed by the lower appellate court.

2. Plea raised before this court is that judgments of two courts below are based on misappreciation of evidence as well as law. In view of judgment delivered by Division Bench of this court reported as Ibrahim Vs. Sharifan, suit would be within limitation. A perusal of order of partition (Ex. D3) reveals that share of defendant No. 2 had already been separated by partition on 18.1.1982 and the plaintiffs had concealed this fact from the court. Plaintiffs have based their claim on three sale deeds allegedly executed on 28.12.1978 and mutation on the basis of same were sanctioned in the year 1979, but the suit was filed in the year 1984. Even if the suit is considered to be within limitation, a perusal of concurrent findings of two courts below reveals that same suffer from no infirmity. The appeal is, thus, without any merit. No other substantial question of law arises warranting interference in second appeal. Dismissed.