

(2002) 07 P&H CK 0029

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal 2523 of 1980

Ajaib Singh (Dead) by LRs.

APPELLANT

Vs

Harbans Singh and Others

RESPONDENT

Date of Decision: July 2, 2002

Citation: (2002) 4 RCR(Civil) 129

Hon'ble Judges: Ashutosh Mohunta, J

Bench: Single Bench

Advocate: H.S. Giani, for the Appellant; Munishwar Puri, for the Respondent

Final Decision: Dismissed

Judgement

Ashutosh Mohunta, J.

The appellant has filed the present regular second appeal against the judgments and decrees passed by both the Courts below, whereby the suit filed by the plaintiff-respondent No. 1 was decreed.

2. Plaintiff Harbans Singh purchased the land measuring 5 kanals 7 marlas, bearing Khasra No. 58/21/1 out of the joint Khata No. 384/440 mentioned in the jamabandi for the year 1960-61, situated in village Basarke, Tehsil and District Amritsar, from Amin Chand and Hans Raj, on the basis of registered sale deed dated March 7, 1968 for a consideration of Rs. 3,000/-. Both Amin Chand and Hans Raj died in due course and their legal heirs were brought on record. According to the plaintiff, due to mutual mistake of the parties, the sold land was described in the sale deed as Killa No. 57/21/1 instead of Killa No. 58/21/1. The plaintiff filed a suit on May 14, 1976 for correction of the mistake crept in the sale deed dated March 7, 1968, and also for possession of the land falling in Killa No. 58/21.1. It was mentioned in the sale deed that the land in question was under mortgage with Massa Singh and Ajaib Singh for a sum of Rs. 850/- vide registered mortgage deed dated December 18, 1965 for a period of 10 years. The mistake in the killa number allegedly came to the notice of the plaintiff after the period of mortgage had expired on December 18, 1975 when he wanted to take steps to get the property redeemed from the mortgagees.

3. The defendants contested the suit of the plaintiff and contended that Killa No. 58/21/1 had never been sold by Amin Chand and Hans Raj. Further plea taken by the defendants is that the suit of the plaintiff is hopelessly time-barred and he intentionally filed the suit after the death of Amin Chand and Hans Raj, the alleged vendors. Massa Singh and Ajaib Singh, defendant Nos. 9 and 10, stated that they are the mortgagees of the land in dispute. The plaintiff had approached them about six years back after the death of Amin Chand and Hans Raj, vendors for getting the property redeemed, but on seeing the sale deed, they told him that he had no right to tender the mortgage amount to them as he had purchased Killa No. 58/21/1. Thus, they contended that the plaintiff knew for the 1st about six years that the sale deed was bogus and fictitious and he is, therefore, estopped from filing the suit by his conduct and laches in filing the suit. Further contention raised by defendant Nos. 9 and 10 is that Smt. Kaushalaya Devi, widow of Hans Raj, had sold Killa No. 58/21/1 and 58/2/2 vide registered sale deed in favour of defendant No. 10 and in favour of Suit. Bhajan Kaur, wife of defendant No. 9, for a sum of Rs. 5,000/- Still further, the defendants have denied that the parties to the sale deed had not intended to transfer Killa No. 58/21.1, or that they had intended to transfer Killa No. 58/21/1.

1. Whether Raj Kumar defendant No. 4, is minor? If so, its effect? OPD

2. Whether the suit is within time? OPP

3. Whether the suit is not maintainable as alleged in para No. 4 of the written statement of defendant No. 9? OPD

4. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD

5. Whether the suit is bad for mis-joinder of parties and causes of action? OFD

6. Whether the suit is not properly valued for the purpose of Court-fees and jurisdiction.

7. Whether the defendant No. 9 and 10 are in possession of the disputed land as mortgagees thereof vide mortgage deed dated 18.12.1965? If so, its effect? OPD

8. Whether Amin Chand and Hans Raj sold the suit land to plaintiff vide sale deed dated 7.3.1968 for Rs. 3,000/-? If so, its effect? OPP

10. Whether Killa No. 58/21/1 was intended to be sold to the plaintiff at the time of sale instead of Killa No. 57/21/1, as such, the sale deed is liable to be rectified? OPP

11. Relief.

After hearing the learned Counsel for the parties and perusing the evidence adduced on record, the learned trial Judge held that the suit was within time as the alleged mistake in the sale-deed came to the notice of the plaintiff when he wanted to get the land in dispute redeemed from defendant Nos. 9 and 10 after the expiry

of the mortgage period on December 18, 1975. It was also held that Killa No. 58/21/1 was intended to be sold by Amin Chand and Hans Raj to the plaintiff. Ultimately, the suit filed by the plaintiff was decreed. The appeal filed by Ajaib Singh appellant was dismissed by the Additional District Judge, Amritsar. He has now come to this Court by filing the regular second appeal.

4. The contention raised by the learned Counsel for the appellant is that the suit filed by the plaintiff was hopelessly barred by limitation. According to him, the alleged sale had taken place on March 7, 1968, but the present suit was filed on May 14, 1976. Thus according to the learned Counsel the number of the property cannot be changed after eight years of the alleged sale. In support of his contention, the learned Counsel has placed reliance on the Single Bench authority of this court reported as [Sarupa and Others Vs. The Panchayati Akhara and Others](#), wherein it has been held by the learned Judge that right "to sue accrues only when the cause of action arises". It has further been held by this Court that the suit "must be instituted when right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by defendant against whom suit is instituted."

5. After hearing the learned Counsel for the appellant, I do not find any merit in the contention raised by him. So far as the position of law, referred to above, is concerned there is no dispute about the same. In the present case the cause of action arises when the plaintiff came to know that there is a mistake in the Killa number mentioned in the sale-deed. The said mistake came to his notice only when he wanted to get the property redeemed from the mortgagees thereof after the expiry of the mortgage period on December 18, 1975. According to the plaintiff, the said error came to his notice one month prior to the filing of the suit on May 14, 1976. The contention raised by him cannot be doubted. There is a clear mention in the sale deed (Ex.P1) that the land in question stood mortgaged with Massa Singh and Ajaib Singh, defendant Nos. 9 and 10. Except the land bearing Khasra No. 58/21/1, no other land was in mortgage with the said defendants. The mortgage period was to expire on December 18, 1975. The plaintiff might have thought that he would get the land redeemed from the mortgagees after the expiry of the mortgage period. Thus, in the natural course the alleged mistake in the killa number could only come to his notice when he had to take action in this regard. Thus, the assertion made by the plaintiff in the plaint seems to be bona fide. It has been held by this Court in the case reported as Charanjit Kaur v. Kamla Devi and Anr. 1977 P.L.J. 344, that "right to sue accrues only when the mistake comes to the knowledge of plaintiff." Thus, it cannot be said that the suit filed by the plaintiff was barred by limitation.

6. The next contention raised by the learned Counsel for the appellant is that there is no mutual mistake in mentioning the killa number in the sale deed wrongly, and the rectification in the Killa number could not be done after the death of the

vendors. The plaintiff had intentionally filed the suit after their death.

7. This contention raised by the learned counsel for the appellant is also meritless. A perusal of the sale deed (Ex.P1) goes to show that khasra number 57/21.1 measuring 5 kanals 7 marlas, Khata Number 384/440 as per jamabandi for the year 1960-16 was sold. It was further mentioned in the sale deed that the land stood mortgaged for Rs. 850/- with Massa Singh and Ajaib Singh. Further, a perusal of the jamabandi (Ex.P3) relating to the year 1960-61 goes to show that killa No. 57/21/1, which is alleged to have been sold, relates to khata number 364, Khatauni Number 446 and the same is in the name of Mohan Devi, Janki, mortgagors, whereas, Baskshish Singh son of Santa Singh is shown as mortgagee, and the area thereof is 1 Kanals 2 Marias. However, Killa No. 58/21/1 in the same jamabandi stands against Khewat No. 384, Khatauni No. 440 and is in the ownership of Amin Chand and Hans Raj. Thus, it stands amply proved that Amin Chand and Hans Raj, vendors, intended to sell killa No. 58/21/1 to the plaintiff and not Killa No. 57/21/1. There was a bona fide mistake in mentioning Killa No. 57/21/1 in the sale-deed (Ex.P1).

8. No other point was raised.

9. In the light of the above discussion, I do not find any merit in this appeal. It is, accordingly, dismissed. However, there shall be no order as to costs.