

(2012) 09 P&H CK 0399

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 1386 of 2011 (O and M)

Darshan Singh

APPELLANT

Vs

Ajaib Singh and Others

RESPONDENT

Date of Decision: Sept. 13, 2012

Acts Referred:

- Limitation Act, 1963 - Article 148

Citation: (2013) 170 PLR 13 : (2013) 1 RCR(Civil) 665

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: S.S. Deol, for the Appellant; Bikramjit Arora, Advocate for Respondent Nos. 1 to 3 and 5 to 12, for the Respondent

Final Decision: Allowed

Judgement

A.N. Jindal, J.

Darshan Singh petitioner, has challenged the order dated 5.2.2011 passed by the trial court, whereby the application for leading secondary evidence of the sale deed dated 14.3.1992 was declined. The application was moved on the ground that defendant No. 2 Gurdeep Singh purchased the suit land, vide registered sale deed dated 14.3.1992 from Kulwant Singh, Ajaib Singh brothers of Gurdeep Singh and Gulzar Singh father of Gurdeep Singh. The petitioner was under the impression that the original sale deed dated 14.3.1992 must be in possession of defendant No. 2, appeared in the Court on 3.12.2010 and produced the photo copy of the sale deed marked as Mark DW8/A. The mutation of the sale deed was sanctioned and possession was also delivered to Gurdeep Singh. The petitioner is the purchaser of the property from Gurdeep Singh and he intended to prove the original sale deed. Since Gurdeep Singh did not produce the original sale deed, therefore, he wants to prove the same by way of secondary evidence.

2. In reply, the plaintiffs stated that the application is mala fide. As a matter of fact, Kulwant Singh, who is one of the executants of the sale deed, had already died on 17.8.1973, therefore, no such sale deed could be executed.

3. The petitioner could not prove the sale deed as he had examined Gurdeep Singh with the hope that he would bring the original sale deed, through which he had purchased the suit property, but Gurdeep Singh refused to produce the original sale deed, as such, occasion to prove the sale deed by way of secondary evidence arose. The existence of the sale deed stands proved from the fact that the sale deed being registered one and copy of the same having been proved on record as mark DW8/A. The apprehension of the petitioner is that since the original sale deed was not proved on the record and only a copy thereof was marked, therefore, that may shadow his title. There is specific issue "whether the defendant purchased the suit property from Kulwant Singh etc?" In order to prove the said issue has to prove the earlier sale deed executed by Gurdeep Singh etc.

4. In the case of Kiran Singh and others v. Balbir Singh and another, 1994 (1) CLJ 463, the Allahabad High Court, while dealing with the question of secondary evidence, held as under:-

There was no need to explain the circumstances in which original was not produced because it is covered by Section 65(e) and (f) and there is no such requirement. Clauses (a), (b) and (c) stand independently of each other. Section 65 of the Act explains the circumstance. In any case the circumstances mentioned in clauses (a) to (g) the secondary evidence can be produced. It is not necessary that if a case is covered by clause (e) and (f) the person who wants to produce the secondary evidence should explain about the original while filing the certified copy of the public document, or of a document of which certified copy is permitted under this Act i.e. in the case covered by clauses (e) and (f) then nothing further is required to be explained. In this view of the matter, I am of the opinion that the learned lower appellate court committed substantial error of law in rejecting the certified copy of the sale deed as inadmissible. In any case it should have made inquiry from the defendants.

5. Further in the case of [Nanni Bai and Others Vs. Gita Bai](#), held as under:-

It was next contended that even if Article 12 was not available to the defendants by way of a bar to the suit, the suit was certainly barred under Art. 134 of the Limitation Act. Under Art. 134, the plaintiff has to sue to recover possession of immovable property mortgaged and, afterwards, transferred by the mortgagee for a valuable consideration, within 12 years from the date the "transfer becomes known to the plaintiff". On the other hand, it has been contended on behalf of the plaintiff that the usual rule of 60 years" limitation under Article 148 of the Limitation Act, governs the present case. On this part of the case, the defendants suffer from the initial difficulty that the sale-deeds relied upon by them in aid of the plea of limitation

under Art. 134, have not been brought on the record of this case, and, therefore, the Court is not in a position to know the exact terms of the sale-deeds. This difficulty, the appellants sought to overcome by inviting our attention to the statements made in paragraph 8 of the plaint. But those are bald statements giving the reasons why the defendants other than the original mortgagee, were being impleaded as defendants. There is no clear averment in that paragraph of the plaint about the extent of the interest sold by those sale-deeds and other transfers referred to therein. The Court is, therefore, not in a position to find out the true position. Those sale-deeds themselves were the primary evidence of the interest sold. If those sale-deeds which are said to be registered documents, were not available for any reasons, certified copies thereof could be adduced as secondary evidence, but no foundation has been laid in the pleadings for the reception of other evidence which must always be of a very weak character in place of registered documents evidencing those transactions. Article 134 of the Limitation Act contemplates a sale by the mortgagee in excess of his interest as such. The legislature, naturally, treats the possession of such transferees as wrongful, and therefore, adverse to the mortgagor if he is aware of the transaction. Hence, the longer period of 60 years for redemption of the mortgaged property in the hands of the mortgagee or his successor-in-interest, is cut down to the shorter period of 12 years" wrongful possession if the transfer by the mortgagee is in respect of a larger interest than that mortgaged to him. In order, therefore, to attract the operation of Article 134, the defendant has got affirmatively to prove that the mortgagee or his successor-in-interest has transferred a larger interest than justified by the mortgage. If there is no such proof, the shorter period under Art. 134 is not available to the defendant in a suit for possession after redemption. A good deal of argument was addressed on the question as to upon whom lay the burden to prove the date of the starting point of limitation under that article. It was argued on behalf of the defendants-appellants that as it is a matter within the special knowledge of the plaintiff, the plaint should disclose the date on which the plaintiff became aware of the transfer. On the other hand, it was contended on behalf of the plaintiff-respondent that it is for the defendants to plead and prove the facts including the date of the knowledge which would attract the bar of limitation under Article 134. As we are not satisfied, for the reasons given above, that Article 134 is attracted to the present case, it is not necessary to pronounce upon that controversy. It is, thus, clear that if Articles 12 and 134 of the Limitation Act, do not stand in the way of the plaintiff's right to recover possession, the only other Article which will apply to the suit, is Article 148. It is common ground that if that Article is applied, the suit is well within time.

As such, since the certified copy is already on record, there is no further requirement in order to show the existence of the document and the document being very relevant to the controversy, the court should have allowed the same to be proved by way of secondary evidence.

Resultantly, this petition is allowed, impugned order is set aside and the petitioner is permitted to prove the sale deed in question by way of secondary evidence.