

Santosh Devi

v.

Sunder

(Special Leave Petition (Civil) No. 12658 of 2025)

02 May 2025

[J.B. Pardiwala* and R. Mahadevan, JJ.]

Issue for Consideration

Whether the High Court rightly dismissed the second appeal filed by the petitioner herein (plaintiff) affirming the judgment passed by the First Appellate Court which had upheld the decree passed by the trial court dismissing the suit on the ground of limitation.

Headnotes[†]

Limitation Act, 1963 – s.17 – Effect of fraud or mistake – Code of Civil Procedure, 1908 – Or.VII, r.6 – Grounds of exemption from limitation law – Petitioner filed suit seeking cancellation of sale deed on the ground that fraud was played upon her to sign the sale deed and thereby transfer the subject property – Suit dismissed on the ground of limitation – Challenge to:

Held: The initial onus was on the plaintiff who had challenged the sale deed – Fraud was alleged as a ground upon which the plaintiff justified the institution of the suit long after the expiry of the limitation period – Further, the requirement of Or.VII, r.6, CPC is also clear – The plaintiff should show the ground upon which the exemption from the normal period of limitation is claimed – It is not the mere use of general words such as ‘fraud’ that can serve as the foundation for the plea – Such expressions are quite ineffective to give the legal basis in the absence of particular statements of fact which alone can furnish the requisite basis for the action – Thus, the fraud relating to the sale transaction as alleged itself would not help the plaintiff in getting over the plea of limitation in this case – Under/s.17, Limitation Act, the plaintiff should have been kept out of knowledge of his right to sue by means of fraud – The alleged fraud relating to the sale transaction itself has nothing to do with the question viz., that the plaintiff had been kept out of knowledge of her right to file a suit for cancellation of the sale deed because of fraud – High Court committed no error in passing the impugned judgment. [Paras 17-19, 21, 22]

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Janardhanam Prasad v. Ramdas (2007) 2 LJR 783; *Prem Singh and Ors. v. Birbal and Ors.* [2006] Supp. 1 SCR 692 : (2006) 5 SCC 353 – referred to.

Walling Ford v. Mutul Society (1880) 5 A.C. 685 – referred to.

List of Acts

Code of Civil Procedure, 1908; Limitation Act, 1963.

List of Keywords

Section 17 of Limitation Act, 1963; Order VII Rule 6 of Code of Civil Procedure, 1908; Fraud; Suit for cancellation of sale deed; Dismissal of suit; Limitation; Exemption from the normal period of limitation; Kept out of knowledge of right to sue; By means of fraud; Concurrent findings; Onus of proof; Registered document; Presumed to be genuine.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 12658 of 2025

From the Judgment and Order dated 23.07.2024 of the High Court of Punjab & Haryana at Chandigarh in RSA No. 520 of 2020

Appearances for Parties

Advs. for the Petitioner:

Karan Kapoor, Manik Kapoor, Ms. Srishti Singla, Shrey Kapoor.

Judgment / Order of the Supreme Court**Order****J.B. Pardiwala, J.**

1. Delay condoned in filing and refiling the SLP.
2. This petition arises from the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh dated 23.7.2024 in Regular Second Appeal No. 520/2020 by which the High Court dismissed the second appeal preferred by the petitioner herein and

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thereby affirmed the judgment and order passed by the First Appellate Court affirming the judgment and decree passed by the trial court dismissing the suit.

3. The petitioner is before us against the concurrent findings of three Courts.
4. It appears from the materials on record that the petitioner herein instituted Civil Suit No.310-RBT of 2012 in the Court of the Additional Civil Judge (SD), Ganaur for declaration with consequential, mandatory as well as permanent injunction.
5. In the plaint, the petitioner prayed for the following reliefs:-

"It is, therefore, prayed that a decree for declaration may kindly be granted declaring the sale deed no.638 dated 26.05.2008 as well as mutation no. 5340 dt.29.08.2008 be set aside to the extent of 1/2 share executed in favour of the defendant Sunder, who fraudulently, forcibly get executed the sale deed and sanctioned mutation to the extent of 1/2 share of the suit land in his favour.

It is, therefore further prayed that a decree for mandatory injunction may kindly be passed in favour of the plaintiff against the defendant directing the defendant to get executed and registered the sale deed as well as rectified the mutation no. 5340 dt. 29.08.2008 to the extent of ½ share of the land detailed in para no.2 of the plaint in favour of the plaintiff, which he got fraudulently, wrongly, illegally got registered in his own favour against the sale consideration already paid by the plaintiff to the vender, in favour of the plaintiff without getting any sale consideration and stamp and registration at his own risk and costs.

It is further prayed that a decree for permanent injunction may kindly be passed in favour of the plaintiff against the defendant restraining him from alienating any part of the suit land detailed in para no.2 of the plaint, under the grab of wrong illegal sale deed no. 638 dt. 26.05.08 and mutation no. 5340 dt. 29.08.08 forcibly and illegally to any person for all time to come."

6. Insofar as the averments regarding the cause of action as pleaded in the plaint is concerned, the same reads thus:-

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"That the cause of action firstly secured to the plaintiff only on 26.05.2008, the date of execution and registration of the sale deed to the extent of ½ share of land in favour of defendant out of the suit land. Secondly in March, 2010 when the plaintiff came to know about the above wrong, illegal sale deed to the extent of ½ share in favour of the defendant, and then on 19.09.2012 the date of serving the legal notice through registered post upon the defendant, and lastly on 08.10.2012, the date of last refusal by the defendant to accede the genuine request of the plaintiff."

7. The trial court framed the following issues for its consideration:-

- “1. Whether the plaintiff is entitled for a decree of declaration that the sale deed No.638 dated 26.5.2008 and its mutation No.5340 dated 29.8.2008 are illegal, null and void to the extent of 1/2 share as prayed for ? OPP.
 2. Whether the defendant is liable to be directed to get executed and registered the sale deed as well as rectified the mutation No.5340 dated 29.8.2006(sic) to the extent of 1/2 share of the land detailed in para No.2 of the plaint in favour of plaintiff, as prayed for ? OPP.
 3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP.
 4. Whether the suit filed by the plaintiff is not maintainable in the present form ? OPD.
 5. Whether the plaintiff has no cause of action and locus-standi to file the present suit ? OPD.
 6. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from the Court ? OPD.
 7. Whether the suit is barred by law of limitation ? OPD.
 8. Whether the plaintiff has not affixed the ad-volerum court fee, thus suit is liable to fail? OPD.”
8. It appears from the materials on record that the trial court essentially dismissed the suit on the point of limitation. We may quote the relevant findings recorded by the trial court in this regard:-

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"The relevant extract of his cross-examination is reproduced here under :-

... Yaha Thik Hai Ki Registry Likhne Ke Bad Ram Parshad Arjinawis Ne Hum Sabhi Ko Padkar Suna Di Thi Aur Sabi Ne Thik Mankar Apne Apne Anguthe Dastak Kiye The..."

Similarly, the vendor of the impugned sale deed – Ex.PW.8 has deposed that he put his signature on the impugned sale deed at the instance of plaintiff. The relevant extract of his cross-examination is reproduced here under :-

"...Meine Bhimsain Ke Kehne Par Thik Mankar Apne Sign Kiye The..."

Plaintiff himself has claimed in his cross-examination that he put his signatures after reading last one and half line which was pertaining to payment of the sale consideration. Meaning thereby, plaintiff himself has also admitted that he was present at the time of execution of the impugned sale deed; put his signatures and appeared before Sub Registrar. This deposition of plaintiff that he just read last one and half line is not comprehensible as he is an educated property dealer. Though, at this juncture, the execution of impugned sale deed without payment stood established yet, from the aforesaid discussion, it is abundantly clear on file that factum of execution of impugned sale deed to the extent of ½ share in favour of defendant was in his notice/knowledge at the time of execution of the impugned sale deed itself i.e. on 26.5.2009."

9. The trial court relied upon the decision of this Court rendered in the case of *Janardhanam Prasad vs. Ramdas* , (2007) 2 LJR 783, for the proposition that the period of limitation for the purpose of seeking cancellation of sale deed would be from the date of registration of the sale deed.
10. The suit ultimately came to be dismissed.
11. The first appeal filed by the petitioner also came to be dismissed. The First Appellate Court recorded the following findings:-

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"20. I have given thoughtful consideration to the submissions made by both sides. It is pertinent to note that a reading of the impugned sale deed Ex.P18 reveals that the plaintiff is also a signatory to the sale deed. It is also noteworthy that the plaintiff admitted his signatures on the sale deed during his cross-examination as PW.10. It is further significant to note that PW.5 Ram Parshad, Deed Writer stated that the sale deed was prepared by him as per instructions of the parties and the contents of the same were read over and explained to the parties who accepted them to be correct and thereafter affixed their thumb impressions and signatures on the same. It is also relevant to note that PW.7 Rameshwar Dass- Numberdar who is attesting witness to the sale deed admitted during his cross-examination that the contents of the sale deed were read over by the Deed Writer before all the parties who accepted them to be correct and thereafter affixed their thumb impressions and signatures on the same. It is further worthwhile to note that PW.8 Ajit Kumar-vendor has made a similar statement in his cross-examination. It is also important to note that the sale deed Ex.P18 is registered document which bears endorsement of the Sub- Registrar that its contents were read over and explained to the parties who accepted them are to be correct and said endorsement carries presumption of truth as per Sub Section (2) of Section 60 of the Registration Act, 1908. In these facts and circumstances of the case, I am of the considered opinion that it is duly established that plaintiff was duly aware about the execution and registration of the sale deed Ex.P18 in his name and in the name of defendant to the extent of half share each since its execution and registration and plea of fraud taken by the plaintiff is not tenable. Accordingly, the plaintiff could have challenged the sale deed within three years from its registration i.e. 26.05.2008. However, the case in hand was filed on 12.10.2012. At this juncture, I may also observe that the provision for condonation of delay under Section 5 of the Limitation Act, 1963 does not apply to suits. Therefore,

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the argument of plaintiff that he was not well and thereby prevented by a sufficient cause from filing the suit within prescribed time cannot be looked into. Consequently, the suit of the plaintiff is hopelessly barred by limitation.

*21. It is further imperative to note that even if it is believed for the sake of arguments, that plaintiff paid the entire sale consideration for purchasing the land which is subject matter of the sale deed under challenge, it is duly established as already discussed above that plaintiff was aware of the fact that defendant was recorded owner in possession of the land to the extent of half share since the very beginning. Thus, when the plaintiff allowed the defendant to get his name incorporated in the sale deed as owner of half share of the land, the stand of plaintiff that he is the absolute owner of the land because he paid the entire sale consideration, is hit by Section 4 of the Benami Transactions (Prohibition) Act, 1988. It is also pertinent to mention that the law laid down in Manoj Arora Vs. Mamta Arora (*supra*) which is relied upon by the learned counsel for the plaintiff does not apply to the present lis as in that case the plaintiff had purchased the property in the name of his wife and in these circumstances it was ruled that bar of Benami Transactions (Prohibition) Act will not apply to the claim of husband over the suit property. However, in the instant case the plaintiff and defendant are not husband and wife or otherwise closely related to each other.*

22. In view of above discussion and peculiar facts and circumstances of the present lis, the citations relied upon by the plaintiff are distinguishable and not applicable to the case in hand and no decree as prayed for can be passed in favour of plaintiff. Consequently, the suit of plaintiff has rightly been dismissed by the Trial Court. Resultantly, no interference in this appeal is warranted and the appeal is dismissed. Parties are left to bear their own costs. Decree-sheet be prepared accordingly. Trial Court record along with copy of this Judgment be sent to Trial Court for information. Appeal file be consigned to record room.”

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12. The petitioner preferred second appeal before the High Court. The High Court dismissed the second appeal holding as under:-

"6. A registered sale deed executed in favour of two purchasers cannot be modified/rectified merely on account of the fact that the payment has been made from the plaintiff's account, particularly, when they were working together as the property brokers. Only they are aware of the equation between them. In any case, the plaintiff may have a right to recover the amount, if the respondent has failed to pay his contribution. However, that will be subject to the rendition of accounts between the plaintiff and the respondents. As regards the second argument, it would be noted that Order VII Rule 6 of the Code of Civil Procedure, 1908, provides for exemption arising out of the Limitation Law. It does not provide for extending the period of limitation or condonation in filing the suit. It only suggests that the ground of exemption from limitation should be specifically pleaded in the plaint. Order VII Rule 6 does not provide a remedy, it merely lays down a procedure."

13. In such circumstances, referred to above, the petitioner is here before this Court with the present petition.
14. We heard Ms. Srishti Singla, the learned counsel appearing for the petitioner at length.
15. The learned counsel pressed into service two submissions. The first submission is with regard to Order VII Rule 6 of the Civil Procedure Code, 1908 (for short "the CPC"). The Order VII Rule 6 of CPC reads thus:-

"7. PLAINT

6. Grounds of exemption from limitation law.—Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed:

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not

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set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.”

16. The second submission is with respect to Section 17 of the Limitation Act. Section 17 reads thus:-

“17. Effect of fraud or mistake.—(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it, or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

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(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.”

17. To appreciate the findings arrived at by the Courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed document is a registered sale deed. It is not in dispute that the petitioner has signed the sale deed. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in *Prem Singh and Ors. v. Birbal and Ors.* reported in (2006) 5 SCC 353. The relevant portion of the said decision reads as below:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

(Emphasis supplied)

In view thereof, in the present case, the initial onus was on the plaintiff, who had challenged the sale deed.

18. When fraud is alleged against the defendant, it is an acknowledged rule of pleading that the plaintiff must set forth the particulars of the fraud which he alleges. In the present case, fraud is alleged as a ground upon which the plaintiff justifies the institution of the suit long after the expiry of the period normally allowed for the institution of the

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suit. Though no specific reference to the provisions of Section 17 of the Limitation Act, 1963 (for short, 'the Limitation Act') is made in the plaint, it is manifest that the pleading proceeds upon the hypothesis that the plaintiff had also contributed along with the defendant in the purchase of the subject property and at the time of the sale, the plaintiff was entitled to 50% of the sale consideration. In other words, the fraud was played upon the plaintiff to sign the sale deed and thereby transfer the subject property. The requirement of Order VII Rule 6, Civil Procedure Code, are clear. It is necessary that the plaint should show the ground upon which the exemption from the normal period of limitation is claimed. The question is whether the plaint in this case fulfils the requirements of law. As observed by Lord Selborne in *Walling Ford vs. Mutul Society* reported in (1880) 5 A.C. 685:

"With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations however strong be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice."

19. It is not the mere use of general words such as 'fraud' that can serve as the foundation for the plea. Such expressions are quite ineffective to give the legal basis in the absence of particular statements of fact which alone can furnish the requisite basis for the action.
20. Order VII Rule 6 uses the words "*the plaint shall show the ground upon which exemption from such law is claimed*". The exemption provided under Sections 4 to 20 of the Limitation Act are based on certain facts and events. Section 17, with which we are concerned, provides for a fresh period of limitation, which is founded on certain facts.
21. The matter can also be looked at from a different angle. Assuming for the moment that the defendant was a party to the fraud as alleged relating to the sale transaction, whether the same by itself is sufficient to save limitation under Section 17 of the Limitation Act. We are of the opinion that the fraud relating to the sale transaction as alleged itself would not help the plaintiff in getting over the plea of limitation in this case. As already discussed, under Section 17 of the Limitation Act, the plaintiff should have been kept out of knowledge of his right

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to sue by means of fraud. We are of the opinion that the alleged fraud relating to the sale transaction itself has nothing to do with the question viz., that the plaintiff had been kept out of knowledge of his right to file a suit for cancellation of the sale deed because of fraud.

22. In overall view of the matter, we are of the view that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment and order.
23. The Special Leave Petition stands, accordingly, dismissed.
24. Pending application(s), if any, stand disposed of.

Result of the case: Special Leave Petition dismissed.

[†]*Headnotes prepared by:* Divya Pandey