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RAJPAL SINGH

v.

SAROJ (DECEASED) THROUGH LRS AND ANR.

(Civil Appeal No. 3489 of 2022)

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MAY 18, 2022

**[M. R. SHAH AND B. V. NAGARATHNA, JJ.]**

- Specific Performance: Agreement to sell – Cancellation of sale deed – Limitation period – Respondent no. 2-original owner agreed to sell his agricultural land to appellant-purchaser for the sale consideration – Before the execution of the sale deed, a declaration decree was obtained by the wife of the respondent no. 2 against the respondent no. 2 whereby she was declared the owner of the land, however, this was not brought to the notice of the appellant nor there was mutation in the revenue record – Thereafter, respondent no. 2 executed registered sale deed in favour of appellant and its name was entered in the revenue records – Appellant remained in possession and since then is cultivating the land – After 5 years, the wife of the respondent no. 2 filed a suit seeking cancellation of sale deed in respect of the suit property on the basis of the declaratory decree obtained by her – Trial court decreed the suit, declaring that the sale deed in favour of the appellant was illegal and nullity as the respondent no. 2 had no title over the land when he executed the sale deed in favour of the appellant – However, the first appellate set aside the decree – In appeal, the High Court restored the judgment and decree passed by the trial court – On appeal, held: Suit for cancellation of sale deed filed by the wife of the respondent no. 2 was clearly barred by law as it was required to be filed within the period of three years from the date of the knowledge of the sale deed – Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the Sale Deed and thus, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief–When composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be*

*cancelled – Suit filed by the wife of the respondent no. 2 for cancellation of the sale deed, can be said to be a substantive thus, the same was clearly barred by limitation–Hence, the suit ought to have been dismissed on the ground of limitation –Appellant can be said to be a bona fide purchaser and that the decree obtained by the wife of the respondent no. 2 was a collusive decree – When the wife of the respondent no. 2 obtained the collusive decree, there was already an agreement to sell in favour of the appellant and subsequently appellant paid the entire balance sale consideration, which was accepted by the respondent no. 2–High Court failed to consider all these aspects – Thus, the judgment and order of the High Court is unsustainable and is set aside and that of the first appellate court is restored and the suit filed by the wife of the respondent no. 2 is dismissed – Limitation.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3489 of 2022.

From the Judgment and Order dated 29.09.2016 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No.4594 of 2009 (O&M).

Ankur Mittal, Ms. Nidhi Mittal, Advs. for the Appellant.

Rudra Pratap, Talha A. Rahman, Shyam D. Nandan, Advs. for the Respondents.

The Judgment of the Court was delivered by

**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.09.2016 passed by the High Court of Punjab and Haryana at Chandigarh in Second Appeal No. 4594 of 2009 by which the High Court has allowed the said appeal preferred by the original plaintiff and has quashed and set aside the judgment and order passed by the First Appellate Court decreeing the suit for specific performance and restoring the judgment and decree passed by the learned Trial Court dismissing the suit for specific performance of the agreement to sell, the original respondent No.1 has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

2.1 That the respondent No.2 herein – original defendant No.2 was the owner of the property in question being in the nature of agricultural land. The original owner – original defendant No.2 entered

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- A into one Agreement to Sell dated 04.04.1993 with the appellant agreeing to sell the property in question for a sale consideration of Rs. 115,000/-. The time for executing the sale deed was extended twice in writing on account of request by original defendant No.1 – executant of the sale deed – original owner.
- B 2.2 According to the case of the appellant herein – original defendant No.1, the original defendant No. 2 and the original plaintiff (husband and wife) hatched a conspiracy. The original plaintiff – wife of the executant of the agreement to sell filed a collusive suit for declaration (without seeking any consequential relief) against her husband - original defendant no. 2 being Civil Suit No. 1643 of 1994. The said suit was filed on the premise that as per some alleged family settlement, the property in question fell to the share of the original plaintiff - wife. However, no family settlement was placed on record.
- C 2.3 In the said collusive suit, the husband - original defendant No. 2 (executant of the agreement to sell in favour of the appellant) filed written statement admitting everything and praying for a decree in favour of his wife – original plaintiff in the present case. Consequently, a decree of declaration was passed on 01.02.1995. The said decree was neither registered with Sub-Registrar's Office, nor any entries were ever mutated in the revenue records. Therefore, the appellant herein – original defendant No.1 was kept in the dark as everything happened behind his back.
- D 2.4 On the strength of the Agreement to Sell dated 04.04.1993, the original defendant No.2- original owner executed the registered Sale Deed in favour of the appellant herein – original defendant No.1 on 19.04.1996. Necessary changes were consequently made in the revenue records as well as entering the name of the appellant immediately on 31.05.1996. The appellant herein – original defendant No.1 remained in possession and cultivating the agricultural land in question since then.
- E 2.5 Almost after five years from the date of execution of the registered sale deed in favour of the appellant, the original plaintiff (wife of the original owner) filed the present suit being Civil Suit. No. 419/ 2007 seeking cancellation of Sale Deed dated 19.04.1996 and relief of possession, claiming her title on the basis of the collusive decree dated 01.02.1995.
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2.6 The suit was resisted by the appellant herein – original defendant No.1. The original defendant No.2 – respondent No.2 herein – the original executant of the registered Sale Deed dated 19.04.1996 deliberately chose not to appear or file any written statement. That solely based on the collusive decree dated 01.02.1995 between the original plaintiff (wife) and the original defendant No.2 (husband), the learned Trial Court decreed the suit vide judgment and decree dated 20.04.2009 observing that in view of the decree dated 01.02.1995 in Civil Suit No.1643 of 1994, the day on which the original defendant No.2 executed the registered Sale Deed dated 19.04.1996 in favour of the appellant herein – the original defendant No.1, he had no title and therefore, the subsequent registered Sale Deed dated 19.04.1996 in favour of the appellant is illegal and a nullity.

2.7 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Trial Court, the appellant herein – original defendant No.1 filed the appeal before the First Appellate Court. By a detailed judgment and order dated 31.07.2009, the learned First Appellate Court allowed the said appeal and set aside the judgment and decree passed by the learned Trial Court on merits as well as on the ground that the suit was barred by limitation. At this stage, it is required to be noted that prior thereto and having come to know about the cheating and fraud committed by the plaintiff and the original defendant No.2 (husband and wife), the appellant herein had filed a complaint case for the offence under Section 420 and 120B IPC and the same is reported to be pending.

2.8 Feeling aggrieved and dissatisfied with the judgment and order passed by the First Appellate Court, the original plaintiff (wife) through her legal heirs filed the present second appeal before the learned Single Judge of the High Court. By the impugned judgment and order, the learned Single Judge of the High Court has allowed the said appeal and has quashed and set aside the judgment and order passed by the First Appellate Court and consequently has restored the judgment and decree passed by the learned Trial Court decreeing the suit preferred by the original plaintiff and granting the declaration that the registered Sale Deed dated 19.04.1996 in favour of the appellant executed by the original defendant No.2 (original owner – husband) is null and void.

2.9 Feeling aggrieved and dissatisfied by the impugned judgment and order passed by the High Court in allowing the second appeal and

- A quashing and setting aside the judgment and order passed by the learned First Appellate Court and restoring the decree passed by the learned Trial Court, the purchaser – the appellant herein - the original defendant No.1 has preferred the present appeal.
3. Shri Ankur Mittal, learned counsel appearing on behalf of the
- B appellant has vehemently submitted that as such, the appellant is the victim of the fraud played by the original plaintiff as well as the original defendant No.2 (wife and husband).
- 3.1 It is vehemently submitted that after having obtained the collusive decree in favour of the original plaintiff – wife, the original owner – husband executed the registered sale deed in favour of the appellant by taking the full sale consideration, i.e., Rs.1,15,000/- without disclosing the appellant about any decree dated 01.02.1995 passed in Civil Suit No.1643 of 1994.
- 3.2 It is submitted that both the learned Trial Court as well as the High Court have not properly appreciated the fact that: -
- (i) The appellant is the victim of fraud;
- (ii) That the original plaintiff obtained a collusive decree in her favour in Civil Suit No.1643 of 1994 and the decree was without any contest by the original owner;
- (iii) That the collusive decree in Civil Suit No.1643 of 1994 was obtained on the basis of the so-called family settlement, which never came on record;
- (iv) That even after obtaining the original decree dated 01.02.1995 in Civil Suit No.1643 of 1994, neither the same was registered before the Office of Sub-Registrar nor any mutation entry in the revenue record was made. It is submitted that thereafter the original owner – original defendant No.2 – husband of the original plaintiff executed the Sale Deed dated 19.04.1996 by accepting the full sale consideration of Rs.1,15,000/-;
- (v) That immediately the appellant was put in possession and since then he has been in possession and cultivating the land in question;
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(vi) That immediately after the registered sale deed in favour of the appellant, the same was mutated in the revenue record on 31.05.1996 and despite the same, the present suit has been filed after a period of five years, which is beyond the period of limitation, i.e., three years. A

3.3 It is submitted therefore that when on appreciation of evidence, the First Appellate Court by a detailed judgment and order set aside the judgment and decree passed by the learned Trial Court and consequently dismissed the suit, the same was not required to be interfered with by the High Court in exercise of the very limited jurisdiction while deciding the second appeal. B

3.4 Making above submissions, it is prayed to allow the present appeal. C

4. Present appeal is opposed by Shri Rudra Pratap, learned counsel appearing on behalf of the respondents herein. D

At this stage, it is required to be noted that the heirs of the original plaintiff (wife) and the original defendant No.2 (husband) are represented by the same counsel. At this stage, it is also required to be noted that as such the original defendant No.2 never contested the suit and/or filed the written statement. E

4.1 Shri Rudra Pratap, learned counsel appearing on behalf of the respondents has vehemently submitted that in the facts and circumstances of the case, the High Court has not committed any error in quashing and setting aside the judgment and order passed by the First Appellate Court and restoring the judgment and decree passed by the learned Trial Court. F

4.2 It is vehemently submitted by learned counsel appearing for the respondents that as rightly observed and held by the learned Trial Court as well as the High Court in second appeal that at the time when the original defendant No.2 executed the registered sale deed in favour of the appellant, he had no valid title in view of the decree passed in favour of the original plaintiff – wife in Civil Suit No. 1643 of 1994. It is submitted that when it was found that the registered Sale Deed Dated 19.04.1996 in favour of the appellant was by a person, who had no title, the same was a nullity and therefore, the learned Trial Court rightly G

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- A decreed the suit for declaration declaring the registered Sale Deed dated 19.04.1996 in favour of the appellant as null and void.

4.3 Now, so far as the submission on behalf of the appellant that the suit was barred by limitation is concerned, it is submitted that in the suit, the original plaintiff also prayed for the relief of possession. It is contended that the suit for relief of possession can be filed within a period of twelve years. Therefore, as the suit was filed within a period of twelve years and the same cannot be said to be barred by limitation.

C 4.4 Making above submissions, it is prayed to dismiss the present appeal.

5. We have heard learned counsel appearing on behalf of the respective parties.

6. The original plaintiff instituted the Civil Suit No. 419/2007 D claiming cancellation of the Sale Deed dated 19.04.1996 in respect of the suit property on the basis of the decree obtained by her in Civil Suit No.1643 of 1994 dated 01.02.1995. It is required to be noted that in the earlier said suit filed by the original plaintiff being Civil Suit No.1643 of 1994, which was filed against her husband – original defendant No.2, E there was no contest by the original defendant No.2 – original landowner and in the written statement, he admitted everything averred in the plaint and on the basis of which the decree came to be passed in favour of the original plaintiff on 01.02.1995. It is also required to be noted that the case on behalf of the original plaintiff in the earlier Civil Suit No.1643 of 1994 was based on an alleged family arrangement, F which was never produced before the court and/or even thereafter also. At this stage, it is required to be noted that prior thereto, there was already an agreement to sell executed by the original defendant No.2 – husband of the original plaintiff dated 04.04.1993 in favour of the Appellant herein and the time for executing the sale deed was G extended twice in writing on requests made by the original defendant No.2 – original owner on 02.04.1994 and 01.04.1995. After the aforesaid agreement to sell dated 04.04.1993 and after the first extension, the original plaintiff filed the aforesaid collusive suit being Civil Suit No.1643 of 1994 and obtained the collusive decree dated 01.02.1995.

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Thereafter, on the strength of the agreement to sell dated 04.04.1993 and without disclosing the decree passed against him in Civil Suit No.1643 of 1994 dated 01.02.1995, the original defendant No.2 – husband of the original plaintiff – original landowner executed the registered Sale Deed dated 19.04.1996 and accepted the balance sale consideration. Necessary changes were consequently made in the revenue records as well, entering the name of the original defendant No.1 – appellant herein in the year 1996 itself. At this stage, it is to be noted that there was no mutation in the revenue records pursuant to the decree dated 01.02.1995 in Civil Suit No.1643 of 1994. It has also come on record and even as admitted by the original plaintiff in the present suit, the appellant herein - original defendant No.1 continued to be in possession and cultivating the land from 1996 onwards and despite the above she filed the suit for cancellation of the Sale Deed dated 19.04.1996, which was in favour of the appellant - original defendant No.1 executed by her husband – original defendant No.2 in the year 2001.

Therefore, the subsequent present suit filed by the original plaintiff in Civil Suit No. 419/2007 can be said to be clearly barred by the law of limitation. The suit seeking cancellation of the sale deed was required to be filed within a period of three years from the date of the knowledge of the sale deed. Therefore, when the name of the appellant herein - original defendant No.1 was mutated in the revenue records in the year 1996 on the basis of the registered Sale Deed dated 19.04.1996 and when he was found to be in possession and cultivating the land since then, the suit was required to be filed by the original plaintiff within a period of three years from 1996. The submission on behalf of the original plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the Sale Deed dated 19.04.1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be

- A cancelled. Therefore, the suit, which was filed by the original plaintiff for cancellation of the sale deed, can be said to be a substantive therefore the same was clearly barred by limitation. Hence, the learned Trial Court ought to have dismissed the suit on the ground that the suit was barred by limitation. As such the learned First Appellate Court was justified and
- B right in setting aside the judgment and decree passed by the learned Trial Court and consequently dismissing the suit. The High Court has committed a grave error in quashing and setting aside a well-reasoned and a detailed judgment and order passed by the First Appellate Court dismissing the suit and consequently restoring the judgment and decree passed by the Trial Court.
- C 7. Even the High Court has also not properly appreciated and considered the fact that the appellant herein - original defendant No.1 can be said to be a bona fide purchaser and that the decree obtained by the original plaintiff in the earlier Civil Suit No.1643 of 1994 was a collusive decree and everything was done behind the back of the appellant herein - original defendant No.1. After pocketing the money and receiving the full sale consideration, the original defendant No.2 as such did not contest the present suit and now in the present appeal, both, the heirs of the original plaintiff as well as the original defendant No.2 are represented by the same Advocate contesting the present appeal. Be that as it may,
- D when the original plaintiff – wife of the original defendant No.2 (original landowner) obtained the collusive decree dated 01.02.1995 in Civil Suit No.1643 of 1994, there was already an agreement to sell in favour of the appellant herein – original defendant No.1 by which the original owner – original defendant No.2 agreed to sell the land in question and a sum
- F of Rs.40,000/- was paid as earnest money at the time of agreement and subsequently the appellant herein – original defendant No.1 paid the entire balance sale consideration, which was accepted by the original defendant No.2 – husband of the plaintiff, the High Court has erred in allowing the Second Appeal. All these aspects have not at all been considered by the High Court, which were considered by the First Appellate Court. The High Court has also not at all considered whether the suit was barred by limitation or not, which ought to have been considered by the High Court. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside.
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8. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court dated 29.09.2016 passed in Second appeal No. 4594 of 2009 is hereby quashed and set aside. The judgment and order passed by the First Appellate Court is hereby restored and consequently the suit filed by the original plaintiff stands dismissed.

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Present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

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Nidhi Jain and Amarendra Kumar  
(Assisted by : Bodhi Ramteke, LCRA)

Appeal allowed.