

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.26 of 1998 (O&M)
Decided on:-February 21st, 2015

Ajit Singh and others

.....Appellants.

Versus

Charan Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Hemant Sarin, Advocate for the appellants.

None for the respondents.

Dr. Bharat Bhushan Parsoon, J.

Plaintiff Charan Singh now respondent No.1 herein, had filed the suit for possession of land measuring 52 kanals 4 marlas detailed in the plaint as also in Jamabandi for the year 1990-1991, against the defendants. Out of the entire set of defendants, defendants No. 1 to 3 are now appellants whereas rest of the defendants were impleaded in this RSA as proforma respondents no. 2 to 5.

2. Suit land once was owned by Central Government. It was auctioned in a restricted auction in terms of the provisions of the Punjab Package Deal Properties (Disposal) Act, 1976. The plaintiff belong to a scheduled caste and being highest bidder, was allotted this land. Consideration of Rs.15,000/- was paid on 30.10.1984. Consequently, sale certificate was issued in his favour on 08.05.1992. As per the case of the

respondent-plaintiff Charan Singh, he was forcibly dispossessed about one and a half year earlier to filing of the suit and having not been able to retrieve the possession, had filed the suit.

3. The contesting defendants sought affixation of advolrem court fees on a sum of Rs. 96,000/-. Plea of bonafide purchasers for valuable consideration in terms of Section 41 of the Transfer of Property Act, 1882 was also taken. Later on, defendant Tega Singh had executed the sale deed on 16.10.1992 in favour of Ajit Singh, Amrik Singh and Darshan Singh sons of Gurdip Singh for a sum of Rs.33,000/- regarding land measuring 17 kanals 19 marlas.

4. On 05.11.1992 said Ajit Singh and others even further sold the land measuring 16 kanals in favour of Rachhpal Sing and Balbir Singh sons of Kabal Singh. In a separately filed written statement by defendants No. 5 and 6, they also claimed themselves to be bona fide purchasers and sought protection of provisions of Section 41 of the Transfer of Property Act, 1882. They also sought dismissal of the suit.

5. Rival claims of the parties were reflected in the following issues framed by the lower Court:-

1. *Whether the plaintiff is the owner of the suit land and is entitled to a decree for possession as prayed for? OPP*
2. *Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD.*
3. *Whether the suit is bad for non-joinder of necessary parties as alleged? OPD.*
4. *Whether the plaintiff executed a valid registered sale deed dated 9.6.92 for a sum of Rs.96000/- in favour of the defendant No.1 to 4? If so its effect? OPD.*
5. *If issued No.4 is proved, whether defendants No. 1 to 4 are bona fide purchasers for value without notice and are protected u/s 41 of the Transfer of Property Act? OPD (1 to 4).*
6. *Whether defendants No. 1 to 4 executed a valid sale deed dated 5.11.1992 in favour of defendants No. 5 and 6 for a sum of Rs.10000/-, If so its effect? OPD.*
7. *If issue No. 6 is proved, whether defendants No. 5 and 6 are bonafide purchasers for value without notice and are protected*

*under Section 41 of the Transfer of Property Act?OPD.
Relief.*

6. Receiving oral as well as documentary evidence from the parties and providing a hearing to their counsel, all the issues were decided in favour of the plaintiff and against the defendants. Consequently, a decree for possession in favour of the plaintiff was passed.

7. The defendants Ajit Singh, Amrik Singh and Darshan Singh had filed an appeal against the judgment and decree dated 24.08.1995. The appeal was partly accepted and was modified to the extent that respondent No.1 was held entitled to the possession of the suit land on payment of Rs.96,000/-.

8. This judgment and decree was made on 16.09.1997. It is this decree which is under challenge in this Regular Second Appeal. The following substantial questions of law were framed for adjudication of the matter in litigation.

- i) *Whether the courts below exceeded their jurisdiction while decreeing the suit of the plaintiff on a premise not even pleaded and set-up by him in the plaint?*
- ii) *Whether the suit for possession filed by the plaintiff could be decreed without there being any prayer for setting aside the sale deed executed by him in favour of defendant Nos. 1 to 3?*
- iii) *Whether the judgments and decrees of the Courts below are perverse?.*

9. Arguments were heard.

10. It is a conceded fact that sale in favour of the respondent Charan Singh had restrictive stipulation that he could not sell the land. Sale was made by the respondent-plaintiff against the restrictive stipulation merely because once there was a condition that the land could not be sold

earlier than 20 years and that too not to a non-scheduled caste person. Sale deed Ex.D-1 executed by the allottee respondent-plaintiff Charan Singh. Rs.1000/- had been paid to the vendor before the Sub-Registrar whereas balance sale consideration of Rs.35,000/- was paid to him vide receipt Ex.D3.

11. Plea of the defendants that the matter was adjudicated by both the courts below going out of reading does not have merit. Pleading are to be read as a whole.

12. When admittedly it is a restrictive sale, the land could not have been sold earlier to the stipulated period and that too to a non-scheduled caste. Vendee Tega Singh had sold his 1/3rd share in favour of Ajit Singh, Amrik Singh and Darshan Singh in equal shares vide sale deed Ex.D-2.

13. The suit land having changed hands by way of sale deeds Ex.D1 and Ex.D2 ipso facto would not sanctify action of the vendors. Rather, such sales having been made in violation of the conditions of sale to the owner are inconsequential. Rather, it has to be noticed that sale certificate (Ex.P1) was issued in the name of respondent-Charan Singh on 08.06.1992 in a tearing hurry. He sold the land on 09.06.1992 itself much earlier to the prescribed period of 20 years; concededly auction of the land had been held on 30.10.1984.

14. Once the sale originally made vide sale deed Ex.D-1 itself is bad in law as the vendor-Charan Singh could not have sold the same, the land could not have been sold further. Sequel, the sales having been made by the defendants against the conditions of sale to the original vendor are bad in law.

15. The demand of possession made by the plaintiff has rightly been hedged by the First Appellate Court with the condition of payment of Rs.96,000/- by the plaintiff to the vendees as undue enrichment of the plaintiff is not permissible in law.

16. Plea of the vendee-defendants that they were bonafide purchasers falls flat, because had they made bonafide enquiries, they were to come to know of the restricted title of the respondent-plaintiff in the suit land. Even subsequent sale by Ajit Singh does not get sanctified because he could not pass title better than what he himself had.

17. It is a clear case where the vendee-defendants did not bother to check the valid transferable title with the original vendor. Principle of caveat emptor was brushed aside.

18. It is wrong to say that in the suit for possession filed by the respondent-plaintiff avoidance of sale deeds Ex.D1 & Ex.D2 was not pleaded. Authorities cited as *AIR 1977 Supreme Court 890 titled as Siddu Venkappa Devadiga versus Smt. Rangu S. Devadiga and others (2004)13 Supreme Court Cases 480 titled as Nagappan versus Ammasai Gounder and others* and *Regular Second Appeal No.2150 of 1979 titled as Hari Singh (dead) through LRs versus Avtar Singh and others* cited by the appellant/defendants holding that appellate Court cannot make out a new case which was not pleaded by a party, does not support the case of the appellants because reading of pleadings of the parties as a whole, leaves no manner of doubt that it was a simple suit for seeking decree of possession impugning the sale deeds in favour of defendants.

Plea of the defendants that proper court fee had not been paid is not available to them at this stage particularly when no such plea was taken and asserted in the courts below.

Counsel for the appellants-defendants has not been able to show any perversity in the impugned judgments and decrees of the court below.

19. As such, all the earlier mentioned two substantial questions of law are answered against the appellants.

20. Keeping in view the facts and circumstances as mentioned

earlier, no ground to interfere with the concurrent findings recorded by the courts below is made out. As such, affirming the impugned judgment and decree dated 24.08.1995 of the lower court as well as judgment and decree dated 16.09.1997 of the first Appellate Court, this Regular Second Appeal, being devoid of any merit, is dismissed.

February 21st, 2015
pooja saini

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?