

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.4568 OF 2010 (O&M)
DATE OF DECISION : 20th AUGUST, 2015

Pawan Kumar

.... Appellant

Versus

Parbhati Lal & Others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Gurcharan Singh Gandhi, Advocate for the appellant.

Mr. Munish Gupta, Advocate for respondent No.1.

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SURINDER GUPTA, J. (ORAL)

This is appeal against the concurrent findings of the Court below whereby the suit of the plaintiff-respondent No.1-Parbhati Lal (now represented by his legal heirs) seeking declaration of his ownership over the suit land measuring 8 Kanal, which he had purchased from respondents No.2 and 3 vide sale deed dated 23.07.1998 was decreed.

The case of the plaintiff, in brief, is that he is in possession of the land measuring 8 kanals which he purchased vide sale deed dated 23.07.1998. The defendant/appellant got executed a sale deed dated 19.06.2003 in his favour from Narbda-defendant/respondent No.2 by playing fraud and got the mutation dated 25.11.2003 sanctioned in his favour. Defendant No.3 Saytapal @ Satpal also obtained loan of ₹40,000/- as owner of the land which was sold to the plaintiff and also mortgage the same with defendant No.4-PLDB Bank, Narnaul.

In written statement defendant/appellant contested the claim of plaintiff inter alia pleading that he has purchased the land measuring 8 kanals out of the land measuring 461 kanal 5 marlas from Satbir vide sale deed dated 10.10.2001 and then he purchased 8 kanals 5 marlas of land from Narbada-defendant widow of Ram Kumar vide sale deed dated 19.06.2003 out of her share 165/9225. Plaintiff-respondent has no concern with the land owned and possessed by the appellant, who is a bonafide purchaser, without notice of any title of the plaintiff over the suit land. Additional Civil Judge (Senior Division), Narnaul decreed the suit of plaintiff-respondent and declared him co-owner/co-sharer to the extent of land measuring 8 kanals and the sale deed No.562 dated 19.06.2003 and the consequent mutation No.634 were declared as illegal to the extent of excess land sold by Narbada to the appellant. It was also observed that the proceedings of mortgage of land, by defendants No.2 and 3 i.e. Narbada and Satyapal qua land sold to plaintiff, were not binding on him. The defendants were also restrained from interfering in the possession of the plaintiff over the suit land.

Not satisfied, the appellant filed appeal, which was dismissed by first appellate court.

I have heard learned counsel for the parties and perused the paper book with their assistance.

Learned counsel for the appellant has argued that both the courts below have not looked into the plea raised by the appellant that he was bonafide purchaser of the land vide sale deed dated 19.06.2003 as by

that time there was no entry in the revenue record that the plaintiff-respondent had purchased any land from Narbada or Satyapal. They have neither got any entry made in the revenue record nor any mutation was sanctioned on the basis of that sale deed. As a common prudent man the plaintiff used his prudence to check the revenue record before purchasing land of the share of Narbada.

He has further argued that the first appellate Court has partly accepted the appeal but ultimately without any modification confirmed the decree passed by the lower court. It has also set up a new case for the plaintiff-respondent beyond pleadings.

On perusal of the paper book, I find that the plaintiff had purchased 8 kanals of land from Narbada and Satyapal vide sale deed dated 23.07.1998. It is not disputed that the appellant also purchased 8 kanals 5 marlas of land from Narbada vide sale deed 19.06.2003. The plea of appellant that he is a bonafide purchaser, was elaborately dealt by the first appellate Court in para 15 of the judgment, which read as follows:

“15. Now turning to the plea of bona fide purchaser for consideration, the plea is not tenable because sale-deed Ex.PW3/A was executed on 23.7.1998 much prior to the sale-deed Ex.P4 executed by Narbada in favour of appellant on 19.6.2003. The claim that there was no mutation on the basis of sale-deed Ex.PW3/A and for that reason on the basis of revenue record Narbada was found to be the owner to the extent of 8 kanals 5 marlas

is not tenable because sale-deed Ex.PW3/A is a registered document and as per settled proposition of law registration of the document is notice to all concerned and in case the appellant before purchasing the land vide Ex.P4 would have verified the record from the Sub Registrar he could exactly know the area in ownership of Narbada and as such if the mutation had not been attested of the sale-deed Ex.PW3/B, the appellant cannot claim to be bona fide purchaser for consideration. Otherwise also, it is settled principle of law that no one can pass better title than one has and when Narbada after the sale-deed Ex.PW3/B was not joint owner to the extent of 8 Kanals 5 marlas as out of the total share 10 kanals 6 marlas she had already sold 5 kanals 3 marlas i.e. 1 kanal 3 marlas to Sukhdev and 4 Kanals to plaintiff vide sale-deed Ex.PW3/A and as such the share of Narbada when sale-deed Ex.P4 was executed was left only to the extent of 5 kanals 3 marlas and when Narbada was not joint owner to the extent of 8 kanals 5 marlas certainly the sale exceeding the area 5 kanals 3 marlas is without title as Narbada could not alienate 8 kanals 5 marlas as she was joint owner to the extent of 5 kanals 3 marlas only.”

Admittedly, the plaintiff-respondent had not got any entry made in the revenue record or got entered the mutation of sale in his favour till the purchase of land by the appellant in the year 2003 but this in no manner validate the sale deed of appellant qua the land which plaintiff had already purchased in the year 1998. At the most the appellant has his remedy against the vendor for the fraud/mis-representation exercised while executing the sale deed in his favour on 19.06.2003.

The first appellate Court has elaborately discussed the share of Narbada in the joint land and reached the conclusion that she after the sales already made by her in favour of plaintiff-appellant and one Sukhdev was left with 5 Kanals 3 Marlas of land. The trial Court has observed that the share left with Narbada was 5 kanals. By calculating the share the appellate Court has only modified that observation of the trial Court to avoid further complication at the time of incorporation of the entry of ownership in the revenue record. After making this observation the appellate Court affirmed the decree passed by the trial Court. As such, this argument of learned counsel for the appellant that despite observation that 'appeal is partly accepted' the lower court judgment was affirmed, is without basis and is discarded.

The execution of the sale deed dated 23.07.1998 in favour of the plaintiff-respondent, is not disputed. In the year 2003 the appellant could not purchase the land more than the share of Narbada-respondent and the observation made by the first appellate Court to this effect call for no interference.

On perusal of the paper book and judgment of the courts below, I find no legal or factual infirmity therein. No substantial question of law requiring determination arises. This appeal has no merit, as such, dismissed.

It is however made clear that the decree passed by the Courts below is only with regard to the relief claimed by the plaintiff-respondent with regard to the sale deed dated 23.07.1998, it will not in any manner affect the remaining share of Narbada, if found in excess of the calculation mentioned in the judgment passed by the courts below.

20th August, 2015
‘raj’

(SURINDER GUPTA)
JUDGE