

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Regular Second Appeal No.4691 of 2010(O&M)

Date of decision: 22.12.2015

Satish Kumar

.....Appellant

versus

Daya Nand and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.P.R.Yadav, Advocate for the appellant
Mr.N.D.Achint, Advocate for respondent Nos.1 to 8
Mr.Sanjay Vij, Advocate for respondent Nos.9 to 16

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

CM Nos.13903-C and 13904-C of 2010

In view of reasons mentioned in the applications, the same are allowed and 98 days delay in filing and 26 days delay in re-filing the appeal is condoned.

RSAS No.4691 of 2010

Impugned in the present regular second appeal is the judgment and decree dated 5.11.2009, passed by the learned Additional District Judge, Gurgaon, affirming the judgment and decree dated 28.8.2009, passed by the learned Civil Judge, Junior Division, Gurgaon, vide which, suit of the plaintiffs was decreed and following relief was granted:-

“the plaintiffs No.5 and 6 the legal heirs of deceased Sarbhu s/o Sheo Ram are owners in possession in the land detailed in para no.1(i) to 1(iii) of the plaint including share of Rect. No.41, Killa No.15 (8-0) on the basis of sale deed dated 23.1.1978 and the defendants have no right, title and interest there in and no title of the said land had ever been passed in favour of defenant Nos.2 to 6 on the basis of sale deed dated 10.6.1979 also, the plaintiffs are co-sharers in possession of an area measuring 2 Kanals out of 1/8th share of defendants No.1 in the land detailed in para No.8 of the plaint and their names are liable to be substituted in the revenue records. Also, permanent injunction is granted in favour of the plaintiffs whereby the defendants are restrained from interfering or dispossessing the plaintiffs from of the suit land in any manner whatsoever. Thus, the suit of the plaintiffs is decreed along with costs.”

I have heard learned counsel for the parties and have also carefully gone through the file.

It comes out that according to the plaintiffs, Ram Chander, previous owner along with his brother Ram Singh and Ram Sarup sold 3/4th share i.e. 23 kanal 11 marlas of land out of the land detailed in para No.1(i) of the plaint to Sarbhu, Raghunath, Ram Narain, Shimbhu Dayal and Maru Ram sons of Sheo Ram vide sale deed dated 10.6.1974. Ram Chander defendant No.1 also sold his 1/4th share in favour of Sarbhu son of Sheo Ram vide sale deed dated

23.1.1978 regarding the property detailed in para 1(ii) and 1(iii) of the plaint. Plaintiffs are the legal heirs of Sarbu etc. Ram Chander defendant No.1 was not left with any title in the suit land. However, he again sold 1/4th share of the land mentioned in para 1(iii) of the plaint in favour of defendant Nos.2 to 6 vide sale deed dated 20.6.1979 regarding the land bearing Killa No.15 Rect. No.41. Defendant No.1 and his two brothers also sold the land mentioned in para 1(i) of the plaint to the ancestors of plaintiffs vide sale deed dated 10.6.1974, including Rect. No.42, Killa No.2(8-0). Defendant No.1 Ram Chander again sold 1/4th share vide sale deed dated 23.1.1978 in favour of Sarbhu and fraudulently again included land of Rect. No.42 Killa No.2 (8-0) in the said sale deed. In this way, Ram Chander defendant No.1 had played a fraud with the plaintiffs and their ancestors. Plaintiffs on becoming aware of the said fact checked the revenue record and instituted the present suit on 7.10.2003.

Defendant No.1 in the written statement denied the sale deed dated 10.6.1974 and 23.1.1978. Defendant Nos.2 to 6 also denied the sale deed dated 10.6.1974 and took the stand that the sale deed dated 20.6.1979 is legal and valid. It was averred that defendant Nos.2 to 6 are bona fide purchasers for valuable consideration without notice of the sale deed in favour of the plaintiffs.

It comes out that the registered sale deed in favour of the plaintiffs dated 23.1.1978 is duly proved and so is the sale deed dated 20.6.1979. Registration of the sale deed is notice to the general public. After the sale of the land on 23.1.1978, defendant No.1 Ram Chander was left with no right or title in the said land. Even if, the

entries regarding sale are not entered in the revenue record, the subsequent sale in favour of defendant Nos.2 to 6 cannot be held legal and valid. Defendant Nos. 2 to 6 cannot claimed to be bonafide purchasers from defendant No.1 for the simple reason that defendant No.1 was not left with any title in the suit land. Entries in the revenue record are made for the purpose of collection of land revenue and the said entries are rebuttable entries. Registered sale deed in favour of plaintiffs is sufficient to rebut those entries. If some fraud is committed by defendant No.1 with defendant Nos.2 to 6, they can take civil and criminal action against him. However, learned counsel for the respondents-plaintiffs has argued that the appellate Court in para Nos.12 and 13 of the judgment has compensated the defendant Nos.2 to 6 with alternative land though in the order, in place of defendant Nos.2 to 6, plaintiffs is mentioned. In any case, the fact would remain that there was a prior sale deed in favour of the plaintiffs and consequently by subsequent sale deed, no title was conferred on defendant Nos.2 to 6.

So far as limitation is concerned, there is no limitation to enforce the title on the basis of sale deed and to challenge the sale deed which is executed without any right.

There are concurrent findings of facts of two courts below.
No substantial question of law arises.

Hence, the appeal is dismissed.

22.12.2015

gk

(Kuldip Singh)
Judge