

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1023 of 2012(O&M)
Date of Decision: August 11, 2015

Balwinder Singh and another

..... Appellants

Versus

Hans Raj and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M. S. Rakkar, Senior Advocate with
Mr. J. S. Virk, Advocate
for the appellants.

Mr. Shailender Sharma, Advocate
for respondent No.7.

Amit Rawal, J (Oral)

The challenge in the present appeal is to the judgment and decree dated 8.8.2008 passed by the Civil Judge (Junior Division), Patiala whereby the suit of the appellant-plaintiff for declaration that they are owners in possession of agricultural land described in the head note of the suit on the premise that they are bona fide purchasers of the suit land and the defendants have no right, title or interest over the suit land and to interfere in any manner in the peaceful cultivating possession of the land as per jamabandi of the year 1992-93 has been dismissed and the judgment and decree dated 18.1.2012 whereby the appeal filed by the appellant-plaintiff has also been dismissed.

Mr. M. S. Rakkar, learned Senior counsel submits that both the courts below have committed illegality and perversity in dismissing the suit in as much as that the appellants-plaintiffs are the

bona fide purchasers for a valuable consideration and they are owners in possession, under Section 41 of the Transfer of Property Act, 1882. He further submits that Chet Ram had obtained an ex-parte decree dated 11.9.1978 by virtue of the same he had become owner by way of adverse possession and therefore, after verifying the revenue record, it was found that name of Chet Ram had been entered.

He further submits that the courts below have misread the oral and documentary evidence and therefore the appeal involves the following substantial questions of law:-

- i) Whether the plaintiff-appellant have become the owner of the property as bona fide purchaser or not.

Learned counsel for the Gram Panchayat-respondent No.7 to whom notice of motion had been issued submits that Chet Ram had obtained a decree *ibid* ex-parte though, it was without jurisdiction, DDPO, Patiala Gram Panchayat initiated the proceedings under Section 7/11 of the Punjab Village Common Lands (Regulations) Act, 1961 and the eviction order dated 30.5.1983 was passed which was upheld in appeal vide order dated 24.5.1995 and therefore, rightly so both the Courts below have rejected the claim of the appellants-plaintiffs by holding that they are not bona fide purchasers. The judgment and decrees are fair, legal and justified and are not liable to be interfered with, much less no substantial question of law arise.

I have heard learned counsel for the parties and appraised the paper book.

It is a matter of record that Ex. P-14 and P-16 mutuation and jamabandi for the year 1978-79 the property stood reflected in the ownership of Gram Panchayat. The appellant-plaintiff only verified jamabandi subsequently on 11.9.1978, therefore, they cannot be said to have made a reasonable enquiry to claim the relief of bona fide purchaser and rightly so the courts below have rejected the same.

There is another aspect of the matter that decree dated 11.9.1978 obtained by Chet Ram claiming ownership on the basis of adverse possession is an ex-parte decree. Decree which is without jurisdiction do not vest any right or interest in the person, much less to the subsequent purchaser at the best subsequent purchaser had a right to claim damages from the erstwhile vendor.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 11, 2015
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