

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.851 of 2013 (O&M)
Date of Decision.17.09.2015

Baljit Singh and another

.....Appellants

Versus

Pirithi Singh and others

.....Respondents

Present: Mr. S.S. Ranghi, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

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K. KANNAN J.(ORAL)

1. Delay of 63 days in filing the appeal is condoned.
2. The plaintiffs filed a suit for a declaration with reference to 1/3rd share in the properties claiming as descendants of Basta Singh son of Mishra Singh. The 1st defendant was brother of Ajmer Singh and defendant Nos.2 and 3 are the purchasers from Ajmer Singh. The suit also contained a declaration that a sale executed in respect of 2/3rd share by 1st defendant in favour of defendant Nos.2 and 3 was not valid. They sought for joint possession with reference to their share in the property and for injunction restraining the purchasers from claiming any right in the property by virtue of an invalid sale according to the plaintiffs.
3. The contention in defence was that there had been an oral partition under the terms of which Ajmer Singh became entitled to 2/3rd

share and yet another person Suba Singh whose descendant is Surjit Kaur became entitled to 1/3rd share. The mutation was said to have been effected even in the year 1982-83 and defendant Nos.2 and 3 contended that they were bona fide purchasers of the property from Ajmer Singh making sure that Ajmer Singh was owner of the 2/3rd share by looking into the mutation of revenue entries and believing the vendor's representation that the property had come to him in an oral partition. The contention also was that the defendant Nos.2 and 3 were, and before them, Ajmer Singh was in possession of the property adversely to the interest of the plaintiffs, having taken a mutation in their name and their title had fructified by adverse possession.

4. The trial Court decreed the suit holding the case of oral partition to be not true and disbelieved also the case of adverse possession. The Appellate Court affirmed the same. The defendant Nos.2 and 3 are the appellants before this Court.

5. Learned counsel for the appellants would state that bona fide purchase must be seen from the context of how revenue entries had been taken only in the name of the 1st defendant and it did not stand in the name of the plaintiffs' predecessor Basta Singh at any point of time. According to him, the contention that even if Ajmer Singh was not entitled to the whole of the property, he had been in possession of 2/3rd share, which was transferred to them and defendants as bona fide purchasers holding the property are entitled to tack the period of possession of their vendor as well and their possession must be taken as constituting adverse title against the plaintiffs. I would reject these contentions for the only reason that the concept of bona fide purchase is

wrongly employed by persons who had purchased the property from person who had no right to the property. If only the rightful owners are allowed for transaction to take place without any contest for such a purchase and they had actively collaborated with the vendor to make the sale, then the bona fides can come into play. If the 1st defendant himself was not shown to be the owner of the property by virtue of the fact that the plaintiffs had admittedly claimed 1/3rd share as brother's children of Ajmer Singh and Ajmer Singh himself was entitled only to 1/3rd share, the mere mutation of revenue entry cannot support title of Ajmer Singh to a larger share unless it was a case of hostile possession with knowledge brought to the real owners by possession of Ajmer Singh ousting the remaining co-sharers. A mere exclusive holding of one co-owner cannot constitute an adverse title and the law requires something more viz; of a hostile conduct excluding the possession with the knowledge that their title was being denied. The component of ouster is much more rigorous amongst co-owners, for, the presumption in law is that the possession of one co-owner is always on behalf of the other co-owners. Without the hostile conduct on the part of Ajmer Singh, a mere reference to a revenue entry as giving him exclusive right to the property to the exclusion of other co-owners was clearly misplaced. I must also observe that there is not even a plea of ouster in the written statement filed by any of the defendants. There is no question of defendants succeeding with regard to the purchase from a person who was not even entitled to the property.

6. The decree granted by the trial Court is perfectly justified and I find no reason to interfere with the same. The second appeal is

dismissed as involving no substantial question of law for consideration in favour of the appellants and the point of law against them.

(K. KANNAN)
JUDGE

September 17, 2015
Pankaj*