

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

**RSA NO. 302 OF 2015 (O&M)
DECIDED ON : 23.04.2015**

Shripal

...Appellant

versus

Kamla Taneja and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Naveen S. Bhardwaj, Advocate,
for the appellant.

K. C. PURI, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 16.10.2014 passed by Shri Jasbir Singh Kundu, Additional District Judge, Jhajjar, vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 21.05.2011 passed by Shri Raj Kumar Yadav, Civil Judge (Senior Division), Jhajjar, was dismissed.

Briefly stated, Kamla Taneja widow of Wazir Chand and Neelam daughter of Wazir Chand filed a suit for declaration and possession with the allegations that Bhagwan Dass was owner in possession of the suit property allotted to him vide conveyance deed dated 22.01.1959 executed by Custodian

Department. The said shop was inherited by Wazir Chand-predecessor-in-interest of plaintiff on account of registered Will dated 20.05.1969 executed by Bhagwan Dass. Wazir Chand executed General Power of Attorney dated 12.11.1975 in order to release the rent, in favour of defendant No.3. Defendant No.2 is the son of Chunni Lal who was the tenant in the disputed shop. Wazir Chand died on 08.03.1994 and the power of attorney stands revoked automatically. Defendant No.3 executed the sale deed dated 26.03.1997 in favour of defendant No.2 and thereafter defendant No.2 executed sale deed dated 03.03.1999 in favour of defendant No.1. Both the sale deeds does not confer any title, in favour of vendees.

Upon put to notice, defendants No.2 and 3 were served but they have chosen not to appear before the trial court and ultimately, they were proceeded ex parte.

Defendant No.1 appeared and filed written statement contesting the suit of plaintiff. Defendant No.1 has pleaded that defendant No.3 has rightly sold the shop in question to defendant No.2 through registered sale deed dated 26.03.1997 and he has purchased the said shop from defendant No.2 vide registered sale deed dated 03.03.1999 for valuable consideration. The plea of bona fide purchasers has been taken. The suit has also been resisted on the ground of delay and laches, acquiescence, estoppel etc.

Replication was not filed.

From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiffs are entitled to be declared as owners of the disputed shop as detailed in para no.1 of the plaint ? OPP
- 2) Whether the sale deeds dated 26.03.1997 and registered sale deed dated 03.03.1999 are wrong, illegal, null and void and not binding on the rights of the plaintiffs in respect of their title in the disputed shop ? OPP
- 3) Whether the plaintiffs are entitled to possession of the disputed shop on the basis of this title ? OPP
- 4) Whether the suit is liable to be dismissed on account of delay, laches and acquiescence ? OPD
- 5) Whether the suit is crystal between the plaintiffs and defendant No.3, if so its effect ? OPD
- 6) Whether the plaintiffs are estopped from filing the suit by their own act and conduct ? OPD
- 6-A) Whether the defendant No.1 is the bona fide purchaser of the shop in dispute for a valuable consideration ? OPD-1
- 7) Whether the defendants are entitled to special costs under Section 35-A CPC ? OPD
- 8) Relief.

In order to prove their case, the plaintiff No.1 Kamla Taneja herself stepped into the witness box as PW-4 and examined Devender Singh, Registry Clerk as PW-1, Bhupender Kumar as PW-2, Lekh Raj as PW-3 and closed the evidence after tendering certain documents.

On the other hand, the defendant No.1 himself stepped into the witness box as DW-3 and examined Sarup Singh as DW-1, Dharamvir Singh as DW-2 and closed the evidence.

The learned trial court has taken Issues No. 1 to 3 together and these issues were decided in favour of the plaintiffs. Issues No. 4, 6, 6-A,7 were decided against the defendants. Consequently, the suit of the plaintiffs was decreed, vide judgment and decree dated 21.05.2011 passed by Shri Raj Kumar Yadav, Civil Judge (Senior Division), Jhajjar.

Feeling dissatisfied with the above said judgment and decree dated 21.05.2011 passed by the Civil Judge (Senior Division), Jhajjar, defendant No.1/appellant preferred first appeal before the first Appellate Court. The said appeal was dismissed with costs vide judgment and decree dated 16.10.2014 passed by Additional District Judge, Jhajjar.

Still feeling aggrieved with the above said judgment and decree dated 21.05.2011 passed by Civil Judge (Senior Division), Jhajjar and judgment and decree dated 16.10.2014 passed by Additional District Judge, Jhajjar, the defendant

No.1/appellant has preferred the present regular second appeal.

Learned counsel for the appellant, in para no.18 of the grounds of appeal has mentioned that following questions of law have arisen in the present appeal :-

- 1) Whether the suit which is barred by limitation is bad and liable to be set aside ?
- 2) Whether a decree based upon misreading of evidence is bad and liable to be set aside ?
- 3) Whether the judgment and decree based upon misconceived facts and unsubstantiated evidence is bad and liable to be set aside ?
- 4) Whether a bona fide purchaser for consideration can be ousted from the property without assessing the provisions of the Contract Act and the validity of the transaction entered into by the General Power of Attorney ?
- 5) Whether the suit could have been decreed without correlating the description of the property ?

Learned counsel for the appellant has submitted that suit of the plaintiffs is hopelessly time barred. The sale deed is dated 26.03.1997 and the same has been challenged after three years. The judgments of both the courts below are the result of misreading and misinterpreting the evidence. The said judgments

are based upon misconceived facts and unsubstantiated evidence and is bad in the eyes of law. The appellant is bona fide purchaser for valuable consideration and as such, he cannot be ousted from the property. The description of the property has not been considered.

I have considered the said submissions but do not find any force in the same.

It is settled principle of law that second appeal lies against the concurrent finding in case both the judgments are the result of misreading and misinterpreting the evidence. There is nothing on the file that judgments of both the courts below are perverse. The ownership of Wazir Chand is not disputed. It is also not in dispute that Wazir Chand died on 08.03.1994. It is also not disputed that sale deed executed by defendant No.3 on the basis of General Power of Attorney is dated 26.03.1997. Once Wazir Chand has died, his General Power of Attorney automatically comes to an end. Defendant No.3 was vested with no right to sell the property after the death of Wazir Chand. The subsequent sale deed dated 03.03.1999 does not confer any title in favour of defendant/appellant. Both the courts below have rightly observed that the vendor can convey the title only which vests in him. The power used by defendant No.3 was on the basis of General Power of Attorney dated 12.11.1975 which stands automatically revoked on 08.03.1994 on the death of Wazir Chand. The subsequent sale deed dated 26.03.1997 by defendant No.3 in

favour of defendant No.2 does not confer any right. The sale deed dated 03.03.1999 by defendant No.2 executed in favour of defendant No.1 does not confer any title. The plea of bona fide purchaser is not available on the facts of present case.

So, in view of the above, I have no hesitation in holding that no substantial question of law has arisen in the instant appeal. Consequently, the appeal is without any merit and the same stands dismissed.

APRIL 23, 2015
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(K. C. PURI)
JUDGE