

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.1803 of 2014 (O&M)

Date of Decision: 11.03.2015

Jagmohan Singh

..... APPELLANT

VERSUS

Gian Devi and others

..... RESPONDENTS

PRESENT: - Mr. Achin Gupta, Advocate
for the appellant.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the 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?

SHEKHER DHAWAN, J.

This Regular Second Appeal is directed against judgment and decree dated 05.10.2013 passed by the Court of Additional District Judge, Faridkot whereby the appeal against the judgment and decree dated 12.01.2011 passed by Civil Judge (Jr. Divn.), Faridkot was dismissed.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil

Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that originally one Bhagwan Singh son of Jawala Singh was the owner in possession of the suit land. He died on 01.05.1975 leaving behind his only son Inder Singh. The mutation of inheritance of Bhagwan Singh was not entered and sanctioned in favour of Inder Singh. In the month of March, 1990 Harnek Singh defendant No.2 approached the plaintiffs and represented himself to be the sole owner of the land in dispute and asked them to purchase the suit land. On the request of Harnek Singh defendant No.2, the plaintiffs purchased the land in dispute on 02.03.1990 for ₹5,000/- and Harnek Singh got executed and registered a regular sale deed. The plaintiffs approached the Halqa Patwari for sanction of mutation on the basis of sale deed but the Patwari refused to enter the same on the ground that the suit land is recorded to be owned by Bhagwan Singh and his mutation has not been sanctioned as yet. As per the plaintiffs, on the basis of wrong advise given to them by their relatives, the sale deed was got executed from Harnek Singh by showing him as Bhagwan Singh. Defendants No.3

and 4 made a complaint to the police and FIR under Section 420 IPC was registered at Police Station Kotwali, Faridkot. Sadhu Ram and Darshan Ram faced trial in criminal case whereas the other accused were acquitted. The appeal filed by Sadhu Ram and Darshan Ram was also dismissed. The plaintiffs claimed that they had suffered a great loss and on the basis of sale deed dated 02.03.1990, they are owners of the land.

Defendants No.2 to 4 filed a Civil Suit No.115 dated 21.04.1993 against the plaintiffs wherein the sale deed dated 02.03.1990 was challenged. The said suit was decreed in ex parte on 21.05.1994. As per the plaintiffs, Harnek Singh defendant No.2 had 1/3rd share in the suit land which he had already sold to the plaintiffs. Defendant No.1 instead of getting the suit land partitioned is taking active steps to take forcible possession from the plaintiffs, to which he had no right. He has threatened the plaintiffs to dis-possess them forcibly.

Upon notice, defendant No.1 appeared and contested the suit by taking preliminary objections that he is bonafide purchaser for valuable consideration. The land was purchased after exercise of due diligence and making inquiries. However, the remaining paras of the plaint were denied. Defendants No.2 to 4 filed written statement taking

preliminary objections that the suit is not maintainable and is liable to be dismissed. The judgment and decree dated 21.05.1991 passed in case No.115 of 21.04.1993 titled as **Punjab Kaur etc. Vs. Sadhu Ram and others** is liable to be dismissed and prayed that the suit be dismissed.

Learned trial Court settled the following issues and the parties were put to trial:

1. Whether the plaintiffs are owners to the extent of 1/3rd share in the property in dispute? OPP
2. Whether the plaintiff is entitled to declaration and permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether defendant No.1 is bonafide purchaser of land in dispute? OPD-1
5. Whether the principal of resjudicata applied to the facts of the case? OPD 2 to 4
6. Whether Harnek Singh sold entire suit land to the plaintiffs vide registered sale deed dated 2.3.1990? OPP
7. Whether the sale deed dated 2.5.2004 executed by defendants No.2 to 4 in favour of defendant No.1 is forged and fabricated and not binding upon the plaintiff? OPP
8. Relief.

Learned Court of first instance after considering the material and evidence available on file decided issues

No.1,2 and 6 in favour of the plaintiffs and against the defendants whereas issues No.3,4,5 and 7 were also decided against the defendants and the suit of the plaintiffs was partly decreed to the effect that plaintiff No.1 is owner to the extent of 1/6th share and plaintiffs No.2 and 3 are owners to the extent of 1/6th share of the land and sale deed dated 15.09.2004 executed by defendants No.2 to 4 in favour of defendant No.1 to the extent of 1/3rd share of the suit land is null and void and not binding on the rights of the plaintiffs. The First Appellate Court did not consider any merit in the appeal and the first appeal was dismissed. Hence, the present Regular Second Appeal before this Court.

I have heard Mr. Achin Gupta, Advocate for the appellant and perused the record file.

Learned counsel for the appellant took the plea that the both the Courts below have mis-read and mis-appreciated the evidence and the same are against the evidence on record. As per learned counsel for the appellant, plaintiffs-respondents No.1 to 3 allegedly purchased the land from respondent No.4 Harnek Singh on 02.03.1990 but no mutation was got entered. Then they got a bogus sale deed prepared dated 17.01.1991, which was challenged by respondents No.4 to 6 and the same was set

aside vide judgment and decree dated 21.05.1994. FIR under Section 420 IPC was also registered for this illegal act. Plaintiffs-respondents No.1 to 3 never filed any suit on the basis of alleged sale deed dated 02.03.1990 nor they defended the suit which was decreed on 21.05.1994 and they never challenged the said judgment and decree which had already attained finality. So, the filing of the present suit on 27.11.2004 claiming relief of declaration on the basis of sale deed dated 02.03.1990 makes the suit of the plaintiffs-respondents No.1 to 3 barred by law of limitation and, as such, the present suit was liable to be dismissed in its entirety.

Learned counsel for the appellant also took the plea that learned Courts below failed to appreciate that the appellant has apparently and sufficiently proved on the record that he is a bonafide purchaser without any notice of the alleged title of the plaintiffs-respondents No.1 to 3 and he purchased the suit land after verifying the revenue record and title of respondents No.4 to 6 in good faith for valuable consideration and prayed that the substantial questions of law are involved in this and appeal be accepted.

The contentions having been raised by learned counsel for the appellant have been duly considered in the

light of the record available on the file. Both the Courts below have recorded concurrent findings based on facts of this case and evidence available on file. The said findings do not involve any substantial questions of law calling for interference of this Court by way of the present Regular Second Appeal. The facts of the case and the evidence available on file have been duly considered by both the Courts below and the said reasoned findings recorded by both the Courts below do not call for any interference. The contentions raised herein by way of Regular Second Appeal have already been considered by both the Courts below.

Resultantly, the present Regular Second Appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

March 11, 2015
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