

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.966 of 2015 (O&M)
Date of decision: 15.12.2015

Sant Singh ... Appellant
Vs.

Bhag Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. R.N.Ojha, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant No.1 is in Regular Second Appeal against the judgment and decree of the lower Appellate Court, which had partly allowed the appeal, filed by the respondent-plaintiffs by holding that sale deed 13.01.2005 shall be valid to the extent of 1/3rd share of defendants No.2 and 3 and *vis-a-vis* share of plaintiffs No.1 and 2, the sale deed has been held to be illegal, null and void.

Mr. R.N.Ojha, learned counsel for the appellant/defendant No.1 submits that the lower Appellate Court has committed illegality and perversity in setting aside the well reasoned judgment and decree of the trial Court dismissed the suit as the vendors/defendants No.2 and 3 had undertaken that they are sole

owners of the property, therefore, appellant/defendant No.1 is bona fide purchaser for a valuable consideration. He further submits that on the land allegedly belonging to the plaintiff, an electric connection, as well as, tube-well has been installed by defendants No.2 and 3, therefore, they are in possession of the land since 1995. He further submits that Section 41(2) of the Transfer of Property Act, provides that sale deed cannot be declared to be null and void until and unless the same has been obtained by playing fraud, thus, the judgment and decree of the lower Appellate Court is not sustainable as the substantial question of law arise for determination of this Court.

In support of his aforementioned contention, he relied upon (paragraphs 36, 37 and 38) of the judgment of this Court in **Smt. Niranjana Kaur and others vs. The Financial Commissioner, Revenue & Secretary to Government, Punjab and others 2010(4) RCR (Civil) 610.**

I have heard learned counsel for the appellant-defendant No.1 and appraised the impugned judgment and decree of the lower Appellate Court and case law.

The provisions of Section 41(2) of the Transfer of Property Act cannot be read in isolation and have to be read in conjunction with other sub-Section. In order to come within the expression 'bona fide purchaser, much less, ostensible owner, a person who asserts such plea has to prove on record by leading direct and cogent evidence that before buying the property he had

made reasonable inquiries. The expression “buyer beware” is the thumb rule of claiming the plea of bona fide purchaser. In the present case, no evidence has come on record to show that appellant-defendant No.1 has made reasonable inquiry which reflected the ownership qua share of respondent No.1. In fact, it has been proved on record that respondent No.1/plaintiff was recorded as co-sharer in the property which has allegedly been sold by defendants No.2 and 3 in favour of defendant No.1. There was no express or implied consent, much less, any power given by the plaintiff to defendants No.2 and 3 to sell his share. I am of the view that plaintiff has been deprived of consideration illegally by defendant No.2 and 3, therefore, the sale deed vis-a-vis his share has rightly been set aside and held to be valid in respect of share of defendant No.2 and 3. It would be apt to reproduce the findings of the lower Appellate Court which read thus:-

“17. The observation of learned trial Court that there was nothing on record to prove that defendants No.2 and 3 had no authority to sell the property is not based on correct appreciation of facts. Merely for the reason that PW1-Nachhattar Singh stated in cross examination that he filed the suit as Jarnail Singh refused to give him share in sale proceeds, was not sufficient to conclude that defendants No.2 and 3 had the authority of other legal heirs of Jit Singh to transfer the property in

question. The non contest by defendants No.2 to 5 cannot be used to support the claim of defendant No.1 nor defendant No.1 can be regarded as bona fide purchaser of the suit property particularly when there is nothing on record to hold that defendant No.1 has acted in good faith taking reasonable care to ascertain that defendants No.2 and 3 had the authority to transfer. Rather, it is clear from cross examination of defendant No.1 that he was well aware that the land which he purchased was owned by the legal heirs of Jit Singh, yet he did not take adequate precaution of examining any document of ownership of defendants No.2 and 3. He admitted that he did not see any family settlement between the legal heirs of Jit Singh and did not give any notice to the plaintiffs that he was going to purchase the land from defendants No.2 and 3.

18. During pendency of the suit/appeal, plaintiff No.3 Mrs. Mato has expired. Therefore, share of plaintiffs No.1 and 2 and defendants No.2 to 5 comes to 1/6th share each and that of defendants No.2 and 3 comes to 1/3 share each. By virtue of the sale deed, 32' x 40' has been sold by defendants No.2 and 3, therefore, the sale of land beyond the share of defendants No.2 and 3 would be void. The sale deed Ex.P2 dated 13.01.2005 is thus valid

to the extent of shares of defendants No.2 and 3. Issue No.1 is answered accordingly.

19. Since, defendant No.1 is the co-owner in the suit property with plaintiffs and defendants No.4 and 5, the appropriate course for the plaintiffs is not to seek possession but partition of the property. Defendant No.1 is, however, to be restrained by way of a decree of permanent injunction from alienating, selling or creating any charge over the suit property in excess of 1/3 share of defendants No.2 and 3. Issue No.1, 2 and 5 are determined accordingly.”

Keeping in view the aforementioned observations, I do not intend to differ with the findings rendered by the lower Appellate Court, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court and the ratio decidendi culled out by this Court in **Smt. Niranjana Kaur's case (supra)** does not apply to the facts and circumstances of the present case.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 15, 2015
savita