

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1926 of 2009

Date of decision : March 4th , 2016

M/s Harbanspura Iron and Steel Industries

..... Appellant

Versus

Amar Nath and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rakesh Chopra Advocate
for the appellant.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for L.Rs of respondent Nos. 2 and 3.

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?

Amit Rawal, J.

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit seeking declaration and permanent injunction to the effect that plaintiff is owner in possession of the land mentioned in the suit land as well as, seeking restraint order against the defendants, their servants, agents from alienating and transferring the property and not to interfere in the peaceful possession of the plaintiff over the land has been dismissed by both the courts below.

Mr. Rakesh Chopra, learned counsel appearing on behalf of the appellant submits that both the courts below have erroneously dismissed the suit. The suit No.401 of 11.12.1973 was filed on behalf of the registered firm through its partners namely Satpal, Sharda, Megh Raj, Jita Singh and Chiranji Lal against

defendant No. 1 seeking declaration of the ownership & possession of the property in dispute which was decreed on 25.1.1974 Ex.PW-2/E. However, taking the benefit of the available entries in the revenue record, Amar Nath sold the same very piece of land to defendant Nos. 2 and 3 vide registered sale deed dated 31.3.1995. Amar Nath had acquired title vide sale deed dated 30.3.1966. The courts below have committed illegality and perversity in dismissing the suit without appreciating the fact that original sale deed came from the possession of the plaintiffs. As regards possession an application for amendment of the suit was filed at the appellate stage as an alternative relief, which has erroneously been dismissed. The said order has been challenged by invoking the provisions of Order 43 Rule 1-A CPC.

Both the courts below erroneously held that the decree dated 25.1.1974 required registration as per the dictum laid down by the Hon'ble Supreme Court in **Bhoop Singh Vs. Ram Singh Major and others (1995) 5 SCC 709** which is not applicable to the present case. The facts and circumstances of the present case are different than the one in the aforementioned judgment whereas as per the ratio decidendi culled out by the Hon'ble Supreme Court in **Bachan Singh Vs. Kartar Singh 2002 (3) RCR (civil) 495** while interpreting the provisions of Order 23 CPC it has been laid down that consent decree passed by the court declaring a party owner of land do not require registration. In essence, the judgment and decree conferred a title upon the firm and therefore Amar Nath did not have any title or interest in the property at the time

when he sold the property to respondents-defendant Nos. 2 and 3. The defendants are not bona fide purchasers for a valuable consideration, much less cannot take the benefit of Section 41 of the Transfer of Property Act, 1882. Defendant No.1 was restrained from alienating the suit property and the parties were directed to maintain status quo regarding possession and urges this Court to formulate following substantial questions of law as carved out in the grounds of appeal.

He further submitted that as per the report of the Local Commissioner, the possession was found to be that of the firm and both the courts below have mis-construed the same by holding that appellant-plaintiff has not been able to prove the same.

- i) Whether courts below can ignore the material evidence & thus impugned judgment and decree is sustainable?
- ii) Whether the admission of the respondent to the fact that possession is of the appellant is itself not enough to conclude that respondent Nos. 2 and 3 are not bonafide purchasers?
- iii) Whether the self serving statement of DW-3 alleging his possession, which is contradictory to the report of the Local Commissioner, can be considered?
- iv) Whether a vendee can have a better title than his vendor?
- v) Whether report of the Tehsildar, who is an expert which is full of reasoning, can be ignored?

Mr. Sumeet Mahajan, learned Senior Advocate assisted

with Mr. Amit Kohar, Advocate appearing on behalf of L.Rs of respondent Nos. 2 and 3 submitted that the judgment and decree dated 25.1.1974 can not be looked into for want of registration, much less stamp duty under Section 33 and 35 of the Stamp Act, 1899 would come into play, for the reason, that decree, creating right for the first time in favour of the firm, required registration. Amar Nath contested the suit by filing a written statement and denied the signatures on the written statement, much less judgment and decree *ibid* . One line in the cross examination viz-a-viz written statement and collusive decree would not confer title upon plaintiff, as the entire cross examination has to be read and not in isolation.

He further submitted that clever attempt has been made to circumvent the statutory provisions of law governing the sale of land, otherwise, the statutory requirement of payment of stamp duty and registration charges would be evaded with impunity. No steps have been taken by the plaintiff to prove the signatures of Amar Nath on the written statement and Power of attorney in the proceedings of Civil Suit No. 401 of 1973 culminating into passing of decree dated 25.1.1974. On the contrary, the respondents-plaintiffs in cross examination proved that the possession, as per record, was of Amar Nath. The status quo does not clothe plaintiff of possession and prays that it is a most innocuous order, thus prays for dismissal of the appeal and submitted that no substantial question of law arise for determination by this Court viz-a-viz concurrent finding rendered by both the courts below filing of the application at the appellate stage seeking amendment by moving a separate application itself

prove that the possession is/was not with the appellant-plaintiff.

He further submitted that as per provisions of Order 41 Rule 33 CPC in the absence of filing of the grounds of appeal, the defendant cannot be prevented to challenge the adverse finding in the absence of any decree against them.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no substance/merit in the appeal. The appellant has miserably failed to prove the signatures of Amar Nath on the Power of attorney and written statement. He contested the suit by filing written statement.

The defendant Nos. 2 and 3 are bona fide purchaser for a valuable consideration, for, the revenue record showed the ownership in the name of Amar Nath who sold it to defendant Nos. 2 and 3 vide registered sale deed dated 31.3.1995. The principle of 'Buyer beware' has been duly complied with, therefore, rightly so the courts below have granted the benefit of provisions of Section 41 of the Transfer of Property Act, 1882. The plaintiff did not disclose passing of the decree to the revenue authorities. In the absence of same, cannot challenge the sale deed after 20 years of passing of decree. The decree, aforementioned, in favour of the alleged firm required registration as per the parameters laid down by the Hon'ble Supreme Court in **Bhoop Singh's case (supra)**. Even otherwise, the document which the plaintiff is relying upon cannot be looked into as per provisions of Section 33 of the

Indian Stamp Act, 1889 for want of stamp duty, therefore is inadmissible in view of section 35 of the Stamp Act, 1889, seeking alternative relief by moving an application, proves that the possession is that of the respondents-defendants.

Keeping in view the aforementioned facts, I intend to differ with the ratio decidendi culled out in **Bachan Singh's case (supra)** as the facts and circumstances of the case as one of the ground in the aforementioned case was with regard to the fraud having been played whereas the present case is not case of such type. In my view, the respondents-defendants are the bona fide purchasers for a valuable consideration. The revenue record also reveal title in favour of Amar Nath.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

The substantial questions of law aforementioned are answered in favour of the respondents-defendants and against the appellant-plaintiff.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

March 4th , 2016
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