

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

R.S.A. No.2723 of 2009 (O&M)

Date of decision: 10.03.2016

Ajit Singh

...Appellant

Versus

Daljit Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sarabjit Singh, Advocate for the appellant.

Mr. Anupam Bhardwaj, Advocate for the respondents.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 05.03.2008, passed by the learned Additional District Judge, Amritsar, (for short, the 'first Appellate Court') whereby, the appeal filed by the respondent-plaintiff, against the judgment and decree dated 28.07.2006, passed by the learned Additional Civil Judge, Sr. Divn., Baba Bakala, (for short, the 'trial Court'), has been allowed.

The learned counsel for the appellant submits that on oral family partition respondent No.3-Dalbir Singh S/o Hazara Singh had received 1M 4-1/2 Sarsai, along with a room constructed

thereupon. He (Dalbir Singh) executed a sale deed dated 29.05.2001 in favour of respondent No.2-Tarsem Singh, the son of the appellant, for the said property. He further states that respondent No.2 has installed an electric meter in his name in the said property. The sale deed executed by respondent No.3 in favour of respondent No.2 is prior to that executed by Harzara Singh and Karam Singh in favour of respondent No.1. Therefore, the learned Trial Court has rightly dismissed the suit of respondent No.1-plaintiff and the learned Ist Appellate Court has erroneously passed the impugned judgment and decree.

The learned counsel for respondent No.1 states that respondent No.1 had purchased the disputed property from the original owners i.e. Hazara Singh and Karam Singh vide sale deed dated 21.09.2001. He contends that the learned Trial Court has passed the impugned judgment and decree merely on the grounds that the alleged sale deed dated 29.05.2001 is prior in time to the sale deed dated 21.09.2001 and during cross examination respondent No.1 could not tell the number of electric connection installed in her property. He further submits that the learned Trial Court has not considered the fact that respondent No.3 has no locus standi to execute the sale deed dated 29.05.2001 as he was not the owner of the suit property. Respondent No.3 has stated that on the basis of oral

family partition he has received the suit property from his father- Hazara Singh, however, no such partition had ever taken place among the family members. The learned counsel submits that as per Jamabandi Ex.P3 necessary entries have been made in the revenue record in favour of respondent No.1 after the execution of sale deed dated 21.09.2001.

I have heard the learned counsel for the parties and carefully gone through the entire record on file.

It is settled law that where there are the equities, the first in time shall prevail if it is legal and valid otherwise the second will prevail if it is legal. Admittedly there are two sale-deeds dated 29.05.2001 and 21.09.2001.

Respondent No.1 has alleged that she had purchased the property in dispute from Hazara Singh and Karam Singh, both sons of Bhagat Singh vide registered sale-deed dated 21.09.2001.

The defendant has alleged that vide sale-deed dated 29.05.2001, the defendant, Tarsem Singh had purchased this property from Dalbir Singh, son of Hazara Singh. This sale-deed dated 29.05.2001 relates to land measuring 1 marla and 4 ½ sarsai. How Dalbir Singh @ Pappu was competent to sell this land, it is explained that his father Hazara Singh (one of the vendors of sale-deed dated 21.09.2001) had made oral partition of his property according to which, Hazara Singh, father of Dalbir Singh had given

this land with one room to his son Dalbir Singh (the vendor of the sale-deed dated 21.09.2001).

As per jamabandi, Ex.P2 and Ex.P3, Daljit Kaur was recorded as owner in possession to the extent of 1/7th share out of 1 kanal 8 marlas on the basis of sale-deed dated 21.09.2001, executed by Hazara Singh and Karam Singh, sons of Bhagat Singh. It is proved on record that Hazara Singh and Karam Singh were competent to sell the land as the mutation was already entered in favour of both the vendors. Thus, Daljit Kaur vendee was a bonafide purchaser from both the vendors, Hazara Singh and Karam Singh.

Tarsem Singh, though claiming ownership on the basis of earlier sale-deed dated 29.05.2001, cannot be said to be the bonafide purchaser from vendor Dalbir Singh, who was not competent to sell the property. Thus, the sale-deed dated 29.05.2001 is null and void and Tarsem Singh, vendee does not derive any right, title or interest in the property on the basis of this sale-deed. It is alleged that Dalbir Singh was owner of this property on the basis of oral partition which he received from his father Hazara Singh (the vendor in the sale-deed dated 21.09.2001). There is not an iota of evidence that Hazara Singh gave this land to his son, Dalbir Singh in oral partition. There is no entry in the revenue record regarding oral partition. No witness came forward to support the oral partition. Even the statement of DW2, Tarsem Singh-the vendee of sale-deed

dated 29.05.2001, has made everything clear. He stated that Hazara Singh son of Bhagat Singh (i.e. the father of Dalbir Singh) was owner of the suit land measuring four marlas. He admitted the execution of sale-deed in favour of Daljit Kaur. He also admitted that mutation of the property had been sanctioned on the basis of sale-deed dated 21.09.2001. He further admitted that he had not filed any suit to challenge the sale-deed dated 21.09.2001 nor objected to the mutation. It means that on 29.05.2001, Tarsem was aware that the original owner of the land was Hazara Singh-the father and not Dalbir Singh, the son. The son had no right, title or interest in the property, though the sale deed dated 29.05.2001 is prior in time, but the alleged vendor was not competent to sell it to Tarsem Singh, who could not derive any title from the sale-deed dated 29.05.2001. Thus, the findings of the Ist appellate Court on issues No.1, 2 and 6 are affirmed; holding that Daljit Kaur is owner in possession of the land on the basis of the sale-deed dated 21.09.2001 executed by Hazara Singh and Karam Singh and that sale-deed dated 29.05.2001 executed by Dalbir Singh in favour of Tarsem Singh is null and void. Thus, the learned Ist Appellate Court has rightly set aside the judgment and decree dated 05.03.2008 passed by the learned Trial Court, which is affirmed.

On consideration, this Court finds that the contentions raised by the learned counsel for the appellant have no merit. No

evidence has been shown to have been ignored from consideration. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

10.03.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**