

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

R.S.A. No.4765 of 2009 (O&M)

Date of decision: 09.02.2016

Smt. Phulpati @ Phulo

...Appellant

Versus

Jai Pal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Rajender Chhokar, Advocate
for the appellant.

Mr. Anil Rathee, Advocate
for respondent Nos.1 and 2.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 31.01.2009, passed by learned Additional District Judge, Sonapat, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 21.12.2007, passed by learned Additional Civil Judge, (Sr. Divn.), Ganaur, decreeing the suit of the plaintiffs (for short, the 'trial Court'), has been dismissed.

Undisputed brief facts are as under:-

Smt. Phulpati, defendant No.1 is widowed mother of Balwan Singh, defendant No.2. Balwan Singh, defendant No.2 became the owner of land in dispute by virtue of civil Court consent decree dated 02.10.1996, passed in Civil Suit No.339 of 2004, titled as Balwan Singh Vs. Phulpati. Balwan Singh was entered as owner in the revenue record on 21.02.2001. Balwan Singh, the son had executed a sale-deed Ex.P3 for valuable consideration in favour of Jaipal and Rajpal (PW1) plaintiffs. The sale-deed was scribed by PW4, Subhash Chand Sharma and was duly attested by PW2, Ishwar Singh and PW5, Lambardar Roop Chand, marginal witnesses of the sale-deed Ex.P3.

In civil suit filed on 04.12.1996 Smt Phulpati had pleaded that earlier consent decree dated 02.10.1996 was set aside in judgment and decree dated 02.12.2004 and thus the property reverted back to her, so the sale-deed Ex.P3 is not binding upon her. It is alleged by her that alienation was stayed, so Balwan Singh had no right to sell the property.

Thus, the plaintiffs-Jaipal and Rajpal were compelled to file this civil suit No. 488 of 2004 to challenge the decree dated 02.12.2004, which was decreed with special costs of Rs.1000/- holding that the present plaintiffs Jaipal and Rajpal are bonafide purchasers for valuable consideration, without notice of

any litigation; that the doctrine of *lis pendens* is not applicable and that the defendants have no right to cause any interference in any manner over the land in dispute. The plaintiffs allege that the decree dated 02.12.2004 is result of collusion, misrepresentation and fraud. The suit of the plaintiffs was decreed further holding that the judgment and decree dated 02.12.2004, passed in civil suit No.339 of 2001, titled as Smt Phulpati Vs. Balwan, is null and void because it was obtained by collusion of the defendant-Balwan Singh and the same was liable to be set-aside. It was further held that the plaintiffs are held to be the owners in possession over the suit land being bonafide purchasers on the basis of sale deed dated 21.02.2001 executed by Balwan Singh in favour of the plaintiffs. This suit was decreed on 21.12.2007.

Smt. Phoolpati @ Phulo went in civil appeal No.11 of 2008, which was dismissed on 31.01.2009 by the Additional District Judge, Sonapat.

Hence, this regular second appeal No.4765 of 2009 is filed by Smt. Phulpati-mother.

The learned counsel for the appellant contends that respondent No.3-Balwan Singh, son of the appellant, has no right to execute the sale-deed dated 21.02.2001 Ex.P3 in favour of Jaipal and Rajpal (respondent Nos.1 and 2 herein) regarding

the suit land, as there was stay order dated 16.11.1998, passed with regard to the suit land, which was further affirmed by the learned District Judge, Sonipat vide order dated 26.05.1999. Despite knowing this fact, respondent Nos.1 and 2, purchased the said land, therefore, their claim for this land was liable to be declined being hit by *lis pendens* and the bar under Section 52 of the Transfer of Property Act. Further, the consent decree dated 02.10.1996 in favour of respondent No.3, was set aside vide order dated 02.12.2004, passed in Civil Suit No.339/2004 titled as 'Phulpati Vs. Balwan'. The learned Courts below have erroneously ignored these relevant facts and passed the impugned judgments and decrees in favour of respondent Nos.1 and 2. Lastly, it is contended that respondent No.3 being son of the appellant has fraudulently got the consent decree passed in his favour on 02.10.1996, which is not binding upon the rights of the appellant and the appellant is in physical possession of the suit land. The learned counsel cites '**Kirpal Kaur Vs. Jitender Pal Singh and others**', 2015 (3) Recent Civil Reports (Civil) 826.

On the other hand, the learned counsel for respondent Nos.1 and 2 vendees states that respondents had no knowledge

about any civil suit pending between respondent No.3 and the appellant. Respondent Nos.1 and 2 had purchased the suit land from Balwan Singh son of the appellant-Smt. Phoolpati, after making necessary bonafide enquiries and for valuable consideration. Therefore, respondent Nos.1 and 2 are the bonafide purchasers and they have been cultivating the suit land since the execution of the sale deed. Accordingly, they are protected from Section 52 of the Transfer of Property Act, 1881. Lastly, the learned counsel states that appellant and her son-respondent No.3 in collusion with each other played fraud with Court as well as with respondent Nos.1 and 2 and got the decree dated 02.12.2004 in her favour.

I have heard the learned counsel for the parties and perused the entire record on file.

From the perusal of the record, it emerges that respondent Nos.1 and 2 had purchased the suit land after making a proper bonafide enquiry from concerned persons and revenue authorities. The attesting witnesses to the sale-deed, PW5- Roop Chand, Lambarder, Ganaur and PW2-Ishwar Singh, duly proved the due execution and registration of sale deed. PW3-Jasbir Singh, Registration Clerk, stated that as per record, sale deed

dated 26.02.2001 is correct. PW4-Subhash Chand Sharma, Deed Writer, Ganaur, stated that on the instructions of respondent No.3-Balwan Singh, sale deed was scribed by him read over and explained to the vendor and after admitting its contents correct it was signed by both the parties, and that entry in this regard is at Serial No.25 dated 21.02.2001 in his register. On enquiry made by respondent Nos.1 and 2, from Patwari, Lambarder as well as Chowkidar of the village, it was informed that no litigation is pending qua the suit land. Therefore, they are protected under the Transfer of the Property Act, 1881 and holds them as a bonafide purchaser. In Civil Suit No.327 of 1996 titled 'Balwan Singh Vs. Phulpati', the appellant filed her written statement and admitted the claim of Balwan Singh. Further, the revenue record i.e. Jamabandi for the year 1999-2000 qua the suit land reveals that no fact regarding stay order was mentioned in the said revenue record on or prior to that period and Balwan Singh was shown as owner. Thereafter, respondent Nos.1 and 2 have been shown as owners of the suit land in the Jamabandi for the year 2004-2005. Therefore, it is clearly established that they are in possession of the suit land. The consent decree was set aside vide judgment and decree dated 02.12.2004 on the ground that

no family settlement had been effected between the parties to the suit and not on the ground of any fraud or misrepresentation. Even respondent Nos.1 and 2, vendees were not impleaded as party in that suit. The voters list Mark B clearly shows that the appellant and respondent No.3 i.e. The mother and son are residing together under the same roof. Therefore, the appellant is quite aware of the sale deed dated 26.02.2001 Ex.P3. The appellant took active participation in the selling of her land with the involvement of Balwan Singh, which is substantiated by agreement to sell dated 12.07.2006 (Mark-A1) and receipt of even date (Mark-A2), entered into between the appellant and one Rajender, which bears the signatures of Balwan Singh. Therefore, the first Appellate Court has rightly recorded the finding that the appellant and respondent No.3 being mother and son respectively had been residing together in one house and acted in collusion with each other in getting the judgment and decree dated 21.02.2004 passed in Civil Suit No.399 of 2001 in their favour set aside. In pursuance of the sale deed dated 26.02.2001, the entire payment stands made. Keeping in view the fact that the title of the land at the relevant time was clear which is duly proved from the aforesaid discussion, this Court

finds no fault in the findings recorded by the learned Courts below.

In *Kashmir Singh Vs. Harnam Singh and another*, 2008 (2) RCR (Civil) 688, it has been held that the general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.

On consideration, this Court finds that the contentions raised by the learned counsel for the appellant have no merit. Neither evidence has been shown to have been ignored from consideration, nor there is any misreading of evidence. 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.

09.02.2016

ashok

(JITENDRA CHAUHAN)
JUDGE