

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

RSA No.2282 of 2010 (O&M)

Date of decision : 05.04.2016

Karnail Singh

...Appellant

Versus

Swaran Kanta and ors.

...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. Sarju Puri, Advocate for the appellant.

Mr. Sandeep Jain, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the findings rendered on issue Nos.4 and 7 and consequential relief of permanent injunction restraining the defendant No.1 from interfering in the possession of the plaintiff over the suit land, whereas findings qua other issue have been rendered in his favour.

Mr. Sarju Puri, learned counsel appearing on behalf of appellant-plaintiff submits that suit for declaration and consequential relief of permanent injunction was filed, on the ground, that plaintiff being owner of the suit land having 5/6th share in the property in dispute on the basis of

the sale deed of 12.04.1972 executed by the LRs of Mool Raj except Amar Nath. The aforementioned sale deed was effected in lieu of mutation bearing No.9531 as the LRs of Mool Raj, who had died intestate, were having 1/6th share. By virtue of aforementioned sale deed, he became owner of the land measuring 5/6th share and this fact was reflected in the jamabandi upto 1972-1973. However, on demise of Amar Nath, revenue authorities instead of transferring his 1/6th share transferred the entire share of other sharer in favour of LRs i.e. defendant Nos.3 to 6. Taking the benefit of the aforementioned entry, defendant Nos.3 to 6 sold the property to defendant No.2-Krishna Devi who further sold it to Swaran Kanta in the year 1970, in essence, Swaran Kanta was arrayed as defendant No.1 and Krishna Devi as defendant No.2 and 3 to 6 are LRs of Amar Nath. The trial Court dismissed the suit vis-a-vis defendant Nos.2 to 6 on account of non-furnishing of the correct address by invoking the provision of Order 9 Rule 5 of the Code of Civil Procedure. Though, the said order was assailed but order had attained finality. He submits that once Amar Nath had 1/6th share owing to the wrong entry in the revenue record, the LRs could not have passed more share. They could not have passed on more than what they could inherit from Amar Nath, thus, the sale deed consisting of 1/6th share of Amar Nath and 5/6th share of the appellant in favour of Krishna Devi and subsequently to Swaran Kanta was illegal, null and void and without any title. The trial Court rendered findings on all issues in favour of the appellant but only non-suited on issue Nos.4 and 7 and urges this Court to formulate following substantial question of law:-

- i) Whether the impugned judgments and decrees are against law,

perverse and contrary to the material on record?

- ii) Whether in terms of Order 1 Rule 9 of the Code of Civil Procedure, the Court is empowered to deal with the matter in controversy so far as regards the rights and interest of the parties actually before it?

He submits that during the pendency of the suit, an application under Order 23 Rule 1 was moved for withdrawal of the suit which was also dismissed qua defendant Nos.2 to 6 as the title and interest is of Amar Nath and Swaran Kanta but that would not be fatal for the adjudication of the suit.

Mr. Sandeep Jain, learned counsel appearing on behalf of respondent-Swaran Kanta submits that she is bonafide purchaser for the valuable consideration, for, the property was purchased after examining revenue record. There was no reflection of the sale deed vis-a-vis 5/6th share of the appellant-plaintiff. Even the sale deeds in favour of Krishna Devi and Swaran Kanta have not been challenged and the suit had been filed seeking correction of the jamabandi for the year 1977-78 and thus concurrent findings of fact should not be interfered.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the submission of Mr. Puri, for the reasons, that Swaran Kanta who had surviving interest in the property as other defendants against whom suit was dismissed already sold their right and share whatever they derived either by way of sale deed or by other means. The findings rendered by the trial Court, upheld by the lower Appellate Court vis-a-vis ownership of the

appellant-plaintiff qua 5/6th share has not been assailed, thus plea of Section 41 of the Transfer of Property Act cannot be entertained. Upto the jamabandi for the year 1972-73, revenue record was correct. No explanation has come forth that how the revenue record was changed whether LRs of Amar Nath had acquired the entire share in the property i.e. 5/6th of the appellant and 1/6th share of Amar Nath and allegedly passed on the same. At the best, the sale deed in favour of Swaran Kanta and Krishna Devi can be held to be valid but not vis-a-vis 5/6th share of the appellant who acquired ownership by virtue of sale deed as reflected in the jambandi for the year 1972-73. It is settled law that person who is not the owner of the property cannot pass the better title. The same analogy and principle would apply as the LRs of Amar Nath i.e. 3 to 6 had succeeded to 1/6th share and not entire 5/6th share of other LRs.

Keeping in view the aforementioned facts and circumstances, impugned judgment and decree of both the Courts below are set aside qua issue Nos.4 and 7 and finding on rest of the issues are affirmed.

Substantial questions of law as noticed above are answered in favour of appellant-plaintiff and against respondents-defendants.

Suit is decreed in toto.

Accordingly, appeal is allowed.

Decree-sheet be prepared.

05.04.2016

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**(AMIT RAWAL)
JUDGE**