

RSA No. 2778 of 2012

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In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2778 of 2012(O&M)
Date of Decision: July 8th, 2016

Kartar Kaur

---Appellant

vs.

Sarabjit Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.G.S.Punia, Senior Advocate
with Mr. P.S.Punia, Advocate
for the appellant

Mr. S.S.Salar, Advocate
for respondent No. 1

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

Rekha Mittal, J.

The present appeal has been directed against the consistent findings recorded by the Courts below whereby suit filed by the appellant/plaintiff for declaration, permanent injunction and possession was dismissed by the Civil Judge (Junior Division), Fatehgarh Sahib (hereinafter to be referred as “the trial court”) vide judgment and decree dated 10.5.2011 and the appeal preferred by the plaintiff/appellant against the judgment and decree of the trial court did not find favour with the Additional District Judge, Fatehgarh Sahib.

The facts relevant for disposal of the present appeal are that Kartar Kaur appellant staked her claim to the property on the basis of registered sale deed dated 11.6.1999 purported to be executed by Mohinder Singh son of Sulakhan Singh (her son). It is pleaded that possession of suit land was delivered in her favour on the basis of sale deed but Sarabjit Singh defendant No. 1 took possession of the suit property forcibly from the plaintiff in June 2005. She handed over a copy of the sale deed to halqa patwari in 1999 for sanction of mutation but now she came to know that partwari had not sanctioned the mutation. The revenue entries in the names

of defendant Nos. 1 and 2 are wrong and liable to be corrected in her name.

Sarabjit Singh respondent/defendant No. 1 filed the written statement raising preliminary objections inter alia maintainability, locus standi, concealment of material facts and jurisdiction of the Court. It has been denied that either the suit land was alienated in favour of the appellant or the plaintiff was in possession thereof or he has forcibly taken over possession of the suit land by taking advantage of illiteracy and old age of the appellant. It is further averred that the alleged sale deed is the result of fraud and misrepresentation and has no value in the eyes of law. Defendant No. 2 is the son of the plaintiff and they have tried to commit fraud in connivance with each other. He purchased the property, being bona fide purchaser and without any encumbrance, from Mohinder Singh through registered sale deed dated 23.11.2004 for a sale consideration of Rs. 33,86,000/-. The negotiation for purchase of property was made in presence of the plaintiff and she admitted that the property was free of every encumbrance. Mohinder Singh also executed an affidavit dated 23.11.2004 regarding sale deed in favour of the answering defendant. Mutation bearing No. 1145 sanctioned on the basis of sale in favour of the answering

defendant is genuine and valid. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

Mohinder Singh defendant No. 2 did not contest the proceedings.

The plaintiff filed replication reasserting her stand taken in the plaint while controverting the allegations set up in the written statement.

The learned trial court, in view of pleadings of the parties, framed the following issues:-

1. Whether the plaintiff is entitled for a decree of declaration of suit property as prayed for in the head note of plaint?OPP
2. Whether the plaintiff is entitled for decree of permanent injunction as prayed for in the head note of the plaint?OPP
3. Whether the plaintiff is entitled for possession of suit property as prayed for in the head note of the plaint?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiff has no locus standi to file the present suit?OPD

6. Whether the plaintiff has concealed the true and material facts from the court?OPD

7. Whether the plaintiff has not come to the court with clean hands?OPD

8. Whether this court has no jurisdiction to try the present suit?OPD

8A. Whether the suit is not properly valued?OPD

9. Relief.

The parties were permitted to adduce evidence in support of their respective claims. The plaintiff examined Chanan Singh PW1, Sadhu Singh PW2, Sewa Singh PW3 and Rajinder Singh Deed writer PW4.

To rebut evidence of the appellant/plaintiff, defendant/respondent No. 1 appeared as his own witness and examined Ashok Kumar Deed Writer DW2, Santokh Singh Deed Writer DW3, Bhupesh Sharma DW4, Manmohan Kumar DW5, Jaswant Singh DW6, Mohinder Singh (defendant No. 2) DW7, Baljit Singh DW8, Hem Raj Verma Deed Writer DW9 and Chetan Singh DW 10. He further tendered into evidence documents Exs. DW11 A to DW11/J.

On due consideration of the issues framed for determination, materials placed on record in the light of rival submissions made by counsel for the parties, the learned trial court determined issue Nos. 1 to 3 taken up jointly against the appellant/plaintiff. Issue Nos. 4 to 8 and 8A were answered against the defendant/respondent but eventually, suit filed by the appellant came to be dismissed with costs. As has been noticed hereinbefore, the appellate court concurred with the findings recorded by the trial court on material aspects of the matter and dismissed the appeal vide judgment and decree dated 25.1.2012.

Still feeling dissatisfied, the matter has been carried in appeal before this Court.

Counsel for the appellant has assailed the findings recorded by the courts below primarily on two counts. The first submission made by counsel is that the courts have committed a gross error rather illegality in upholding plea of the respondent that he is a bona fide purchaser of the suit land without appreciating that it is none of the plea of the respondent/defendant No. 1 that he made an enquiry from the office of the Sub Registrar when otherwise, the registered sale deed executed in favour

of the appellant in the year 1999, five years before the alleged sale in favour of respondent No. 1 at the behest of respondent No. 2 (alleged ostensible owner) is deemed to be a notice to the public at large including the respondent. For this purpose, reliance has been placed upon judgment of this Court **Amrit Singh vs. Tarlok Singh and others 2004(3) R.C.R. (Civil) 447**. In addition, it is submitted that the mere fact that mutation on the basis of sale deed executed in favour of the appellant was not sanctioned in her favour or the alleged enquiry having been made by the respondent from the revenue agency qua the suit property is not sufficient to discharge the onus that the respondent is a bona fide purchaser for consideration and without notice of the sale deed (registered) executed in favour of the appellant. It has further been argued that as the sale deed in favour of the appellant was executed in the year 1999, a long before the sale deed was executed in favour of respondent No. 1 in November 2004, no such plea of the respondent that the sale deed dated 11.6.1999 executed by defendant No. 2 in favour of the appellant is either the result of collusion or that of fraud or misrepresentation in order to cause loss to the respondent/defendant is tenable.

Another submission made by counsel is that mere non-filing of replication does not and cannot mean that there has been admission of the facts pleaded in the amended written statement. In this context, reference has been made to judgment of Hon'ble the Supreme Court of India **K.Laxmanan v. Thekkayil Padmini and others 2009(1) R.C.R.(Civil) 388.**

Counsel for the respondent (successful defendant), on the contrary, has supported the judgments passed by the courts below. It is argued that consistent findings recorded by the courts below in favour of the respondent are not amenable to challenge in the second appeal more particularly in the circumstances that the appeal does not give rise to any question of law much less a substantial one. It is urged that as the respondent/defendant made negotiations for purchase of suit land in the presence of the appellant who further assured that the land is free from encumbrance, the appellant cannot be allowed to take advantage of the judgment in **Amrit Singh's case (supra)**. It is urged that as the appellant has not denied the allegations raised in the written statement (by way of amendment) and she preferred to treat the replication filed to the original written statement to be a replication to the amended written

statement as well, non-denial of allegations raised in the written statement by way of amendment amounts to an admission of the appellant and sufficient to negate contention of the appellant that the respondent is not a bona fide purchaser much less he has purchased the suit land despite having notice/knowledge of the sale deed dated 11.6.1999 in her favour when admittedly no entry was made in the revenue record with regard to said sale between the mother and the son.

I have heard counsel for the parties, perused the paper book, records received from the courts below and the judgments cited by counsel for the appellant.

Concededly, the suit land was perviously owned by Sh. Mohinder Singh son of Sulakhan Singh (defendant No. 2) and Kartar Kaur appellant is the mother of Mohinder Singh. It has been proved on record that Mohinder Singh executed a registered sale deed dated 11.6.1999 in favour of his mother Smt. Kartar Kaur. However, there is no satisfactory much less cogent and convincing evidence on record to establish plea of the appellant that possession of suit land was delivered by Sh. Mohinder Singh in favour of Smt. Kartar Kaur on the basis of sale deed dated 11.6.1999 or

the respondent/defendant No. 1 has forcibly taken over possession of the suit land from the appellant in the year 2005. Sarabjit Singh respondent has raised a categorical plea that he is a bona fide purchaser for consideration without notice of the alleged sale deed dated 11.6.1999. It has been proved by him that before purchasing the suit land, he made enquiry from the revenue records and did not find any entry in favour of Smt. Kartar Kaur or the land was found to be recorded in the name of Mohinder Singh(defendant No. 2).

Counsel for the appellant has sought to assail the concurrent findings of the courts below with regard to respondent No. 1 being a bona fide purchaser by taking resort to Section 3 of the Transfer of Property Act, 1882 (for short “TPA”) by making reference to the judgment in **Amrit Singh's case (supra)**.

This Court in **Amrit Singh's case (supra)** in paras 6 and 7 has held quoted hereunder:-

“6.The said findings of fact recorded by the first appellate Court do not suffer from any illegality or irregularity warranting interference by this Court. The

sale in favour of the plaintiff is by registered document.

The registration of a document is constructive evidence for us as held by Hon'ble Supreme Court in 1999 SC 2171:

“41. Under Section 3 of the Transfer of Property Act, “a person is deemed to have notice” of a fact when he actually known that fact or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.”

The explanation I thereto says:

“Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of it, or share or interest in such property shall be deemed to have notice of such instrument as from the date of registration....”

42. Inasmuch as the rectification deed is a registered deed, it is deemed to be notice to the Builder in view of Section 3 of the Transfer of Property Act.

43. Once notice is there, actual as well as constructive, a plea of bona fide purchaser without notice or rights of Lokram Group is not permissible.....”

7. The parties are also residing in the same village. Such transactions of sale are known to the inhabitants of the same village. There is presumption to this effect as held by Supreme Court in **Dr. Govinddas and another v. Shrimati Shantibai and others, 1972 PLR 227**. Thus, I do not find any substantial question of law arising for the consideration of this court.”

The question that arises for consideration is whether in the given facts and circumstances of the instant case, the appellant can derive advantage to her contention by reference to Section 3 TPA. Explanation I appended to Section 3 TPA, no doubt, would have been attracted in the

present case if the respondent had not made an enquiry from the appellant/plaintiff with regard to any encumbrance on the suit land.

In the amended written statement, the following facts are incorporated in para 2, on merits:-

“It is fair to mention here that negotiation of the property was made in the presence of plaintiff who also stated at village Beer Bhamarsi at the time of negotiation that property in question is free of every encumbrance and had not stated even a single word as objection to purchase of property by defendant No. 1 from Mohinder Singh rather was agreed with Mohinder Singh plaintiff also stated that she never transferred any portion from the suit property in her name, so defendant No. 1 being bona fide purchaser is owner in possession of the suit property purchased by him by paying the full and final sale consideration and Mohinder Singh further purchased the property in Tehsil-Bholath District Kapurthala vide different sale deeds from the amount of sale

consideration obtained by him from defendant No. 1.....”

The respondent was allowed to amend the written statement as counsel for the appellant/plaintiff made a statement raising no objection qua thereto. The amended written statement was filed on 12.10.2010 and a copy thereof was supplied. The case was adjourned to 18.10.2010 for filing of replication. Counsel for the appellant made a statement that the appellant did not wish to file amended replication and previous replication be read to amended written statement. A relevant extract from order dated 18.10.2010 passed by the trial court, reads as follows:-

“Present: Counsel for the parties.

Counsel for the plaintiff suffered statement, that he does not wish to file amended replication. Previous replication be read to amended written statement. For additional evidence of plaintiff to come on 29.10.2010.”

In the replication filed to unamended written statement, there was no reply to the facts which were added by way of amendment. As the appellant was given an opportunity to file replication to the amended written

statement and she availed of that opportunity by making a statement that her earlier replication be read as replication to the amended written statement, her failure to give any reply or controverting the facts added by way of amendment would amount to admission on her part. The judgment of Hon'ble the Supreme Court in **K.Laxmanan's case (supra)** will not lend any support to contention of the appellant in the peculiar facts and circumstances of the present case, discussed hereinabove.

In **K.Laxmanan's case (supra)**, it has been held in para 31, reads thus:-

“Pleadings as we understand under the Civil Procedure Code (for short “the Code”) and as is defined under the provision of Rule 1 Order 6 of the Code consist only of a plaint and a written statement. The respondents/plaintiff could have filed a replication in respect to the plea raised in the written statement, which if allowed by the court would have become the part of the pleadings, but mere non filing of a replication does not and could not mean that there has been admission of the facts pleaded in the

written statement. The specific objection in the form of denial was raised in affidavits filed in respect of the injunction applications which were accepted on record by the trial court and moreover the acceptance on record of the said affidavit was neither challenged nor questioned by the present appellant.”

As in the case at hand, the appellant filed the replication to the amended written statement, the replication would be a part of the pleadings and has to be read alongwith the plaint and written statement. As has been noticed hereinbefore but at the cost of repetition, as the appellant did not give any reply much less specifically denying the facts added by amendment of the written statement, it is clear admission on the part of the appellant that the negotiations for purchase of the suit property were made in her presence and she made a representation that the property in question is free from encumbrance. Not only this, the appellant did not appear in the witness box to deny the allegations in the written statement that she was present at the time of negotiation for sale/purchase of the suit property and she made a representation that the property is free from encumbrance.

Above all, Sarabjit Singh respondent examined himself to substantiate his plea that he is a bona fide purchaser for consideration without notice. He tendered into evidence his affidavit Ex. DW1/A. A relevant extract from para 6 of the affidavit is quoted hereinbelow for ready reference.:-

“It is fair to mention here that when defendant No. 1 purchased the property in question then plaintiff was very well aware of the sale deed executed by Mohinder Singh in favour of deponent and plaintiff did not raise any objection neither at the time of executing the sale deed by Mohinder Singh in favour of deponent nor at the time of sanctioning the mutation in his favour and the possession of property in question by deponent from Mohinder Singh was also never objected by anybody including plaintiff Kartar Kaur because the alleged sale deed of 11.6.1999 was result of fraud and without any sale consideration and without the delivery of possession.”

During his cross examination, the factum of respondent having

met the appellant at her house when the deal was discussed has been admitted. A relevant extract from the concluding lines of cross examination of Sarabjit Singh reads as under:-

“It is wrong to suggest that I purchased the property with (sic) payment of anything. Kartar Kaur is aged about 60/65 years and I met at her home when the deal was discussed. It is wrong to suggest that Kartar Kaur told me at that time regarding the sale deed in her favour. Voluntarily said. I asked her and she told that property is clear.”

Keeping in view the averments raised in the written statement without any reply thereto in the replication coupled with the factum that the appellant herself did not appear in the witness box nor produced any material to substantiate the plea that she was incapacitated to examine herself alongwith the fact that plea of the respondent that he met the appellant at the time of deal qua purchase of suit land at her house is proved, it is difficult to accept contention of the appellant that in the circumstances of the present case, she can take advantage of the registered

sale deed to negate plea of the respondent that he is a bona fide purchaser of the suit land.

Mohinder Singh son of the appellant did not contest the proceedings and opted to be ex parte. However, he appeared in the witness box on behalf of respondent No. 1 and tendered into evidence his duly sworn affidavit Ex. DW7/A in examination in chief. He supported cause of the respondent to the hilt and even denied execution of the sale deed in favour of Kartar Kaur (his mother) on 10.6.1999. When he was cross examined by counsel representing the appellant before the trial Court, he took a complete somersault and virtually admitted claim of the appellant. The conduct of defendant No. 2 clearly goes a long way to substantiate the plea that the mother and the son connived together and for that reason they kept the sale deed dated 10.6.1999 as a guarded secret at the time when Sarabjit Singh negotiated for purchase of suit land in the presence of the appellant and rather was made to understand by them that the suit land is free from encumbrance. It has also been proved on record that Mohinder Singh furnished an affidavit at the time of sale of suit land that the suit property was free from encumbrance. Keeping in view the above, in case,

plea of the appellant is accepted or she is allowed to take benefit of the provisions of Section 3 TPA or the judgment in **Amrit Singh's case (supra)**, it would amount to perpetuating an illegality committed by the appellant and her son Mohinder Singh.

Viewed from the point of view of equity, the same lies in favour of the respondent. Admittedly, there is no entry in the revenue records qua sale in favour of the appellant. There is nothing on record suggestive of the fact that she ever remained in possession of the suit land. Statement of Mohinder Singh (DW-7) corroborates plea of the respondent that he purchased suit land by payment of an amount of Rs. 33,86,000/- towards sale consideration. The respondent made due inquiry from the appellant who made him to believe that land was free from encumbrance. As has been noticed hereinabove, the mother and son connived together to cause wrongful loss to the respondent. That being so, I find it difficult to subscribe to the contentions of the appellant and that too in the circumstances that the courts below have recorded concurrent findings upholding plea of bona fide purchaser of the respondent (contesting).

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

July 8th, 2016
paramjit