

101

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

**RSA-4476-2012 (O&M)
Date of decision: 03.05.2016**

Amarjit Singh

..... Appellant

VERSUS

Mukand Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Naresh Chander, Advocate for
Mr. R.S. Chauhan, Advocate
for the appellant.

JITENDRA CHAUHAN, J.

The present regular second appeal has been filed by the plaintiff against the judgment and decree dated 27.02.2009, passed by Civil Judge, (Junior Division), Nabha vide which the suit filed by the plaintiff was dismissed and; the judgment and decree dated 08.12.2011, passed by Additional District Judge, (Fast Track Court), Patiala, whereby the appeal filed by the plaintiff was dismissed.

In brief, the plaintiff filed suit for permanent injunction on the averments that he is the exclusive owner in possession of the land measuring 3 bighas, comprised in Khewat/Khata No.24/51, Khasra No.992/596 min (1-0), 859/597 min (2-0), situated at village Ranno, Tehsil Nabha,

which he purchased through registered sale deed No.35 dated 20.04.1999 from Balbir Kaur wife of Sh. Daljit Singh, resident of village Ranno Khurd, Tehsil Nabha and since then he is in exclusive possession of the suit land. It was further pleaded that defendants have got no right, title or concern with the suit land but they are threatening to interfere in the peaceful possession of the plaintiff and to dispossess him from suit property illegally and forcibly. Hence, the suit.

Upon notice, the defendants appeared and filed written statement contesting the suit of the plaintiff denying the exclusive possession of the plaintiff. It was pleaded that in fact, defendant No.3 is in possession and the plaintiff is threatening to take forcibly possession from defendant No.3. The defendants also filed counter claim to the effect that on 09.06.1987, Daljit Singh, husband of vendor-Balbir Kaur executed an agreement to sell his land owned and possessed by him with respect to the land measuring 5 bighas 19 biswas, situated at village Ranno, Tehsil Nabha. Defendant No.3 filed a suit for specific performance in the Court of Sub Judge First Class, Nabha, in which money decree was passed in favour of defendant No.3 vide judgment and decree dated 15.10.1990 against which an appeal was preferred, which was allowed by learned District Judge, Patiala for specific performance of the agreement vide judgment and decree dated 16.09.1994. The execution of the same was filed. It was further pleaded that

Balbir Kaur filed a suit against Daljit Singh on 18.07.1987 for declaration that she was exclusive owner in possession of the land measuring 16 bighas 18 biswas, which covers the suit land also and Daljit Singh admitted her claim in the Court and that suit was decreed. It is submitted that decree amounts to transfer of land by Daljit Singh in favour of his own wife Balbir Kaur without consideration and it was held that by obtaining a collusive decree, said Daljit Singh cannot avoid the execution of agreement dated 09.06.1987 and it was also held that Balbir Kaur was bound by decree, which was in favour of Norang Singh. RSA-2943 of 1994 was filed by Balbir Kaur, which was dismissed on the basis of compromise and statements of Daljit Singh and Balbir Kaur were recorded on 10.11.1997, whereby they gave an undertaking in execution No.36 of 03.12.1994 on 08.01.1998, to get the sale deed executed and registered in favour of decree holder as per compromise. It was further pleaded that as per the undertaking, the sale deed was executed by Daljit Singh in favour of defendant No.3-Norang Singh on 14.01.1998. Brother of defendant No.3, namely, Mukand Singh was appointed special attorney of Daljit Singh, both Balbir Kaur and Daljit Singh annexed their affidavits to the sale deed and copy of statement and after execution of sale deed, the possession of suit property was delivered to Norang Singh. At that time, the land was on lease with Banta Singh. Balbir Kaur and her husband Daljit Singh directed Banta Singh

to pay remaining lease money to Norang Singh, who received the same and after cultivation of crops, the possession was handed over to defendant No.3, who continued to be in possession.

Defendant No.3 moved an application before AC 2nd Grade, Bhadson to the effect that no mutation should be sanctioned on the basis of sale deed No.35 dated 20.04.1999, as the plaintiff was not in possession of suit property, the revenue official visited the spot to find out as to who was in possession. A case under Section 420 IPC was also registered against plaintiff and his vendees and other persons. It is also submitted that sale deed No.35 dated 20.04.1999 is covered under Section 52 of the Transfer of Property Act and is hit by principle of lis pendens, so it was liable to be declared void, ab initio and is liable to be set aside.

After appraisal of the evidence, the learned trial Court dismissed the suit and decreed the counter claim filed by Narang Singh-defendant No.3 holding that the plaintiff was not a bona fide purchaser of the land in dispute. The sale deed No.35 dated 20.04.1999 was null and void as the same was hit by the principle of lis pendens.

Feeling aggrieved, the plaintiff filed an appeal before Additional District Judge, Patiala. The Lower Appellate Court dismissed the appeal vide judgment and decree dated

08.12.2011 by observing that though, the plaintiff is in possession of the land yet the possession is not legal.

Still feeling dis-satisfied, the present regular second appeal has been filed by the plaintiff assailing both the aforesaid judgments and decrees.

The sole argument of the learned counsel for the appellant is that the plaintiff was recorded in possession of the land in dispute in the jamabandi for the year 1996-1997, Ext. P-2. Once the possession of the plaintiff is proved, the question of title is immaterial. The Courts below ought not to have travelled beyond while deciding the suit for permanent injunction. To decide the controversy between the parties, the question of title was not relevant.

I have heard the learned counsel for the appellant and have gone through the case file.

The appeal is barred by 132 days. Along with the appeal, the appellant has filed CM No.12526-C of 2012 seeking to condone the delay of 132 days on the ground that the certified copy of the impugned judgments and decrees as well as complete file were misplaced by learned counsel for the appellant before Id. First appellate Court in his office while shifting. The application is not supported by an affidavit of the counsel. The averments made in the application appear to be afterthought. There is no good ground to condone the delay. Accordingly, the application is dismissed.

Even otherwise, this Court has rescanned the entire case file on merits. In this case, the plaintiff sought prohibitory decree against the defendants on the ground that he had purchased 3 bighas of land from Balbir Kaur vide sale deed dated 20.04.1999. Thus, on the strength of the same, he seeks injunction against the defendant. On the other side, the case of the defendants is that the defendant No.3, Norang Singh had purchased 5 bighas 19 biswas land, which comprised the suit land as well, from Daljit Singh, husband of Balbir Kaur. Defendant No.3, Norang Singh had filed suit for specific performance against Daljit Singh and Balbir Kaur. The same was decreed by the Ist Appellate Court vide judgment and decree dated 16.09.1994, passed by the District Judge, Patiala. The parties filed RSA-2943 of 1994, wherein a compromise was recorded on the statement of Daljit Singh and Balbir Kaur on 10.11.1997. The couple gave an undertaking in execution No. 36 of 03.12.1994 to get the sale deed executed and registered in favour of decree holder, i.e. Norang Singh-defendant No.3. Thereafter, one civil suit was filed by Balbir Kaur against her husband Daljit Singh for declaration that she was exclusive owner in possession of land measuring 16 bighas and 18 biswas. Thereafter, a collusive decree was passed. The collusive decree was held to be not binding on the rights of Norang Singh. The question before this Court is whether the sale deed dated 20.04.1999 executed by Balbir Kaur in favour of

plaintiff, Amarjit Singh is valid or the same is hit by principle of lis pendens. Both the Courts below have held that the sale deed is hit by Section 52 of the Transfer of Property Act as Balbir Kaur was in the knowledge of the entire litigation and the sale deed was executed during the pendency of litigation between Norang Singh and Daljit Singh. Therefore, the sale deed dated 20.04.1999 does not create any right in favour of the plaintiff-Amarjit Singh. So the plaintiff cannot be termed as a bonafide purchaser for valuable consideration. However, it is the contention of the learned counsel for the appellant that in jamabandi Ext. P-2, the plaintiff is shown to be in possession of the suit land. This Court is of the opinion that once the sale deed is held to be null and void, the plaintiff being the trespasser cannot seek any injunction against the true owner, i.e. Norang Singh. The Courts below have rightly dealt with this aspect of the matter in correct perspective. There is no mis-reading or mis-interpretation of the evidence. There is no substantial question of law involved in the present regular second appeal.

Consequently, the appeal is dismissed in limine as well as being time barred.

May 03, 2016
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(JITENDRA CHAUHAN)
JUDGE