

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1832 of 2013 (O&M)

Date of decision:12.05.2016

Bir Singh

... Appellant

Vs.

Roop Singh and others

... 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. K.S.Chahal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.4849-C-2013

For the reasons stated in the application, duly supported by an affidavit, delay of 57 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

C.M.No.4850-C-2013

For the reasons stated in the application, duly supported by an affidavit, delay of 6 days in filing the appeal, is condoned.

C.M. stands disposed of.

C.M.No.4851-C of 2013

The application is allowed, subject to all just exceptions. The names of Balwinder Singh and Darshan Singh sons of Bachan Singh are deleted and substituted by the names of respondents No.3

to 6 in the memo of parties.

Amended memo of parties is taken on record.

RSA No.1832 of 2013 (O&M)

Appellant/defendant No.9 is aggrieved of the concurrent findings of facts and law, whereby, suit at the instance of the respondent-plaintiffs seeking declaration that plaintiff No.1 is owner of the suit land by virtue of sale deed dated 20.12.1990 through Power of Attorney with consequential relief of injunction, has been decreed by both the Courts below.

Mr. K.S.Chahal, learned counsel appearing on behalf of the appellant/defendant No.9 submits that defendant No.1 and 2 had executed a 'Power of Attorney' in favour of father of the respondent-plaintiffs. By virtue of that, sale deed dated 20.12.1990 has been executed in favour of plaintiff No.1. On the contrary, defendants No.1 and 2, vide sale deed dated 02.01.1991 sold the suit property to his client, i.e., defendant No.9. Plaintiffs have miserably failed to prove the execution of the Power of Attorney dated 21.07.1989 and as well as agreement dated 27.11.1989, much less, sale deed in their favour and therefore, authenticity and genuineness of the documents have not been proved. All these facts have not been noticed by both the Courts below, thus, there is illegality and perversity in decreeing the suit. He, thus, urges this Court to formulate the following substantial questions of law as culled out in the grounds of appeal.

I have heard learned counsel for the appellant-defendant

No.9 and appraised the impugned judgments and decrees of the Courts below and of the view that appeal sans merit, for, defendant No.1 did not challenge the findings rendered by the trial Court vis-a-vis execution of the attorney dated 21.07.1989 which was followed by agreement dated 27.11.1989. Once defendants No.1 and 2 did not have the title, it could not have been passed on to appellant/defendant No.9 who is allegedly bonafide purchaser. It was the duty of the appellant to verify the record from the office of the Registrar concerned regarding the property in dispute being it is free from hindrance, much less, subject to any sale or charge. Having failed to do so, appellant cannot be stated to be bonafide purchaser as per the provisions of Section 41 of the Transfer of Property Act.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 12, 2016
savita