

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

R.S.A. No.4047 of 2013 (O&M)

Date of decision: 31.05.2016

Jagdev Singh

..Appellant

Versus

Jangir Gir and others

..Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Vijay Rana, Advocate
for the appellant.

Mr. Rakesh Nagpal, Advocate
for respondent No.1.

Jitendra Chauhan, J.

In this regular second appeal, the appellant-plaintiff has challenged the judgment and decree dated 04.05.2013, passed by Additional District Judge, Mansa, whereby the appeal filed by respondent No.1 against the judgment and decree dated 16.09.2011 of Civil Judge (Sr. Divn.), Budhlada, decreeing the suit of the appellant-plaintiff, has been allowed. Resultantly, the suit of the plaintiff was dismissed by the Ist Appellate Court.

Brief facts of the case are that defendant No.1-Jethu Gir (deceased) had executed a sale deed No.1125 dated

05.02.2001 in favour of respondent Nos.2 and 3, on the basis of which they became owners in possession of the land measuring 54 kanals 15 marlas upto the extent of their share as mentioned in the sale deed. Thereafter, the land was sold by them to the appellant-plaintiff vide sale deed No.928 dated 5.12.2001 and mutation No.1697 was also sanctioned in his favour.

It is contended that the appellant is a bonafide purchaser as he had purchased the suit land from its owners i.e. respondent Nos.2 and 3 vide sale deed No.928 dated 05.12.2001 and on the basis of which the mutation No.1697 has been sanctioned in his favour. He further states that the learned Ist Appellate Court failed to consider this admitted factual aspect of the matter that the sale deed No.928, executed by respondent Nos.2 and 3 in favour of the appellant was not acknowledged. The learned counsel cites '**S. R. Srinivasa Vs. S. Padmavathamma**', 2010(4) RCR (Civil) 210 (SC).

On the other hand, the learned counsel for respondent No.1 states the judgment and decree dated 24.09.2003 passed in Civil Suit No.285 of 2001 was not a collusive decree as the relations between defendant No.1-Jethu Gir (deceased) and respondent Nos.2 and 3 were not cordial, which is duly established from the pending litigations between them. He further states that

the said judgment and decree have attained finality as the same have not been assailed till date. Lastly, he submits that the appellant has not placed on record the sale deed dated 05.12.2001. Therefore, the learned Ist Appellate Court has rightly passed the impugned judgment and decree.

I have heard the learned counsel for the parties and carefully scrutinized the entire record on record.

The appellant is claiming the ownership and possession over the suit land on the basis of sale deed dated 05.12.2001. However, he has not brought on record the alleged sale deed. Even he did not explain as to why such a crucial document has not been produced on record by him. He is relying upon the admitted fact of respondent Nos.2 and 3 qua the due execution of the sale deed in question. Though, respondent Nos.2 and 3 have admitted the due execution of the said sale deed, but the appellant has to place on record the sale deed which is the foundation of his claim regarding ownership and possession over the suit land. The appellant has failed to discharge his onus. Transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

Reference can be had to '**Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana**', JT 2011 (12) SC 654. In the instant case, alleged sale deed has not seen the light of the day. Even the alleged sale deed was executed during the pendency of the Civil Suit No.285 of 23.10.2001. The sale dated 05.02.2001 in favour of defendant Nos.2 and 3 has been set-aside by filing a suit No.285 of 2001 decided vide judgment and decree dated 24.09.2003 Ex.P2 and Ex.P3, which has become final as no appeal has been filed by anyone against that. The suit No.285 of 2001 was filed on 23.10.2001 by defendant No.1 against defendant Nos.2 and 3. The appellant has purchased the suit land from defendant Nos.2 and 3 on 05.12.2001 after filing of the suit by defendant No.1.

It has also been proved on record that relations between defendant No.1 and defendant Nos.2 and 3 were not cordial as there are various civil as well as criminal cases pending between them. Learned Ist Appellate Court has rightly reversed the finding of learned Trial Court on the valid grounds that the basis of the suit i.e. sale deed dated 05.12.2001 has not been produced on record by the plaintiff/appellant to prove his ownership. The appellant has to prove his own case. Mere admission by respondent Nos.2 and 3 of the claim of appellant does not relieve the plaintiff of his duty to prove his case. The

appellant stepped into the shoes of original owner-vendor when the vendor has once defeated his right and lost ownership, the subsequent vendee has no right, title or interest in the property as the main pillar of ownership of previous owner falls on the ground by a contested judgment and decree of civil court. The appellant cannot be termed as bonafide purchaser. Rather, *lis pendens* applies in this case. Therefore, this Court finds no illegality or perversity in the impugned judgment and decree passed by the Ist Appellate Court. The ratio of the reported case does not apply to the facts of the instant case.

No substantial question of law is involved in this case. The findings recorded by learned Ist Appellate Court on the issues under adjudication are, hereby, affirmed.

For the foregoing discussion, the instant regular second appeal is sans merit and is dismissed.

31.05.2016

ashok

(JITENDRA CHAUHAN)
JUDGE