

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

**Regular Second Appeal No.1946 of 2016 (O&M)
Date of Decision: April 25, 2016.**

Paramjit Kaur and others

.....APPELLANT(s).

VERSUS

Saudagar Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Chauhan, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal against the judgment and decree passed by Additional District Judge, Hoshiarpur, whereby the first appeal filed by plaintiff-respondent No.1 was accepted and the suit filed by him seeking declaration that he is joint owner in possession of the land measuring 2 kanals 10 marlas out of land measuring 43 kanals 12 marlas situated in village Hardokhanpur, H.B. No.224, on the basis of registered sale deed dated 07.09.2001, was decreed and the sale dated 08.01.2005 and the sale certificate issued by District Consumer Disputes Redressal Forum, Hoshiarpur (later referred to as 'the Consumer Forum') was held to be illegal, null and void qua this land and not effective on the rights of the plaintiffs.

2. The case of the plaintiffs, in brief, is that he had purchased 2 kanals 10 marlas of land out of suit land vide sale deed dated 07.09.2001 from Prime Green Forest Ltd. In proceedings against Prime Green Forest

Ltd., before the Consumer Forum, land of M/s Prime Green Forest Ltd. was attached along with the land measuring 2 kanals 10 marlas purchased by the plaintiff. In the auction, said land was purchased by Sukhchain Singh, predecessor-in-interest of defendants No.1 to 5 (now appellants). Plaintiff alleged that Prime Green Forest Ltd. was not the owner of the suit land on 08.01.2005, as such, any sale in excess of the share of original owner, does not confer any better title on defendants No.1 to 5.

3. The claim of the plaintiff was contested by defendants No.1 to 5 on the ground that the suit land including the land measuring 2 kanals 10 marlas was owned by Prime Green Forest Ltd. and out of it, land measuring 36 kanals 7 marlas was purchased by Sukhchain Singh, predecessor-in-interest of defendants, in an open auction held by the Consumer Forum on 08.01.2005. The sale was confirmed on 12.01.2005 and sale certificate was issued in favour of Sukhchain Singh on 18.01.2005. Sukhchain Singh and after his death on 14.05.2006, his successors-in-interest are owners in possession of land measuring 36 kanals 7 marlas. It was alleged that plaintiff never became owner of the suit land. He had full knowledge regarding attachment, auction and sale of the land measuring 36 kanals 7 marlas in favour of Sukhchain Singh.

4. The suit was dismissed by learned Additional Civil Judge (Senior Division), Hoshiarpur with the observations as follows:-

(i) Plaintiff has been able to prove that he had purchased the land measuring 2 kanals 10 marlas vide sale deed dated 07.09.2001. He had moved application for entering and sanctioning of mutation in his favour but was not aware of the fate of the application. It was proved that no mutation

based on the sale deed dated 09.07.2001 was entered and sanctioned in favour of plaintiff.

(ii) Plaintiff did not file any appeal against the order of the Consumer Forum challenging the sale of land in dispute.

(iii) Plaintiff had knowledge regarding auction but never challenged the same.

(iv) Plaintiff challenged the mutation of the suit land in favour of Sukhchain Singh but his plea failed before the revenue Courts.

5. Not satisfied, plaintiff filed appeal, which was accepted by Additional District Judge, Hoshiarpur. Learned first Appellate Court observed that mutation was only for the fiscal purposes and is not the proof of title. The title passes as soon as sale deed is executed. The first Appellate Court observed in para 24 of the judgment as follows:-

“24. Although there is no effect of sanctioning or not sanctioning of the mutation in favour of the plaintiff, however, still the court finds that even it cannot be said that the plaintiff has been negligent in any manner in not getting the mutation sanctioned. Although the plaintiff could not prove on record any evidence that he has immediately approached the concerned revenue authorities after execution of the sale for getting mutation sanctioned and the document brought on record by the plaintiff is of quite late time however, the factor that it is not responsibility of the vendee to get the mutation sanctioned cannot be lose sight. For this reference can be made to the case of **Kashmir Singh Vs. State of Haryana reported vide 2011 (3) RCR (Civil) 56**, in which Hon'ble High Court has dealt with para no.7.32 of the Punjab Land Records Manual read with section 34, 35 and 37 of the Punjab Land Revenue Act

where it has been clearly held that there is statutory obligation on the revenue officers to sanction the mutation when the registered sale deed is forwarded to them. So it is case in which the duty of the registrar to have forwarded copy of registered sale deed and it was only to have registered the sale deed. Hence, it could not be said that the plaintiff had been negligent in any manner.”

6. Learned counsel for the appellants while assailing the judgment of first Appellate Court has argued that Sukhchain Singh had purchased land measuring 36 kanals 7 marlas in auction conducted by the Consumer Forum, Hoshiarpur. He was a bona fide purchaser for consideration. Before attachment of the land of Prime Green Forest Limited, a report was called by the Consumer Forum from the revenue authorities, in which suit land was shown as owned by the above concern. The plaintiff after purchase vide sale deed dated 07.09.2001, had never got the mutation of the suit land incorporated in the revenue record, as such, there was nothing on the record to show that he had become owner of the suit land. Learned first Appellate Court has gravely erred while ignoring the fact that Sukhchain Singh had purchased the land in open auction conducted by the Consumer Forum and the plaintiff had not proved that the sale of land measuring 2 kanals 10 marlas to him vide sale deed dated 07.09.2001 by Prime Green Forest Ltd., as such, cannot challenge the sale certificate issued by the Consumer Forum, Hoshiarpur in favour of Sukhchain Singh.

7. On giving a careful thought to the submissions of learned counsel for the appellants, I find no reason to accept the same. Admittedly, land measuring 2 kanals 10 marlas was purchased by the plaintiff from Prime Green Forest Ltd. The sale deed in favour of plaintiff has never been

challenged or set aside. The mere fact that the mutation on the basis of sale deed in favour of plaintiff was not entered or sanctioned, in no manner, affect the title of the plaintiff over the suit land.

8. The law is well settled that a person cannot pass better title than he himself has in the property. The auction of land of Prime Green Forest Ltd. measuring 36 kanals 7 marlas was conducted by the Consumer Forum. As land measuring 2 kanals 10 marlas out of 36 kanals 7 marlas had already been sold to plaintiff, the sale conducted in open auction and the sale certificate issued by the Consumer Forum, in no manner, transfers this land in favour of Sukhchain Singh. Learned first Appellate Court has rightly rejected the plea of appellants that non sanctioning of mutation of the land measuring 2 kanals 10 marlas on the basis of sale deed dated 07.09.2001, in no manner, can be held against the plaintiff to divest him of his title over this piece of land.

9. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

10. No substantial question of law requiring determination arises in this appeal, which has no merits.

11. Dismissed.

April 25, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE