

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

**RSA No.4688 of 2013 (O&M)
Date of Decision: 22.08.2016**

Yudhveer Singh

.....Appellant

Vs

Sudarshan and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Abhinav Sood, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Defendant No.1 is in second appeal against the concurrent judgments and decrees passed by the Courts below decreeing the suit of the plaintiff for declaration of title qua properties 'ABC' mentioned in the plaint and claim in respect of sale deed dated 10.12.1998 executed by defendant No.2 in favour of defendant No.1 to be illegal, null and void and not binding upon the rights of the plaintiff.

[2]. Plaintiff filed a suit on the premise that sale deed dated 10.12.1998 executed by defendant No.2 in respect of property mentioned in para A in the headnote of the plaint was illegal, null and void. Plaintiff was owner in possession of suit property

shown in paras B and C in the headnote of the plaint. Injunction was also sought to restrain the defendants from denying title of the plaintiff.

[3]. Plaintiff claimed that he was exclusive owner in possession of the suit property as mentioned in paras A, B,C of the plaint and the sale deed dated 10.12.1998 was claimed to be illegal, null and void. Plaintiff and defendant No.2 were joint owners of the suit property. The property was mutually partitioned on 20.11.1986. As a result of aforesaid partition, the property mentioned in para A of the plaint came to the share of the plaintiff which was challenged in the aforesaid suit. Defendant No.2 had taken abadi property situated in District Kangra which was joint of the parties in lieu of property mentioned in para Nos. B and C in the plaintiff. As a result of aforesaid mutual partition, defendant No.2 had relinquished his claim qua the suit property by executing a writing dated 26.05.1995.

[4]. Plaintiff further alleged that defendant No.2 sold the property shown in para A of the plaint to defendant No.1 vide sale deed dated 10.12.1998 during pendency of the suit, despite the fact that the property came to the share of plaintiff on account of mutual partition dated 20.11.1986 and also relinquishment made by defendant No.2 by way of executing

writing dated 26.09.1995.

[5]. On put to notice, defendant No.1 filed separate written statement. Suit was contested on all counts. Defendant No.1 alleged that suit was liable to be dismissed under Order 2 Rule 2 CPC. Relationship of plaintiff No.1 and defendant No.2 was admitted. He further alleged that defendant No.2 had alienated the suit property to answering defendant vide sale deed dated 10.12.1998 for valuable consideration, therefore, answering defendant was bona fide purchaser of the suit property mentioned in para A. Surrendering of rights vide writing dated 26.09.1995 in favour of plaintiff by defendant No.2 were denied.

[6]. Defendant No.2 also filed separate written statement and contested the suit on all counts. Defendant No.2 alleged that suit property was joint property with plaintiff and he had rightly alienated his share in the property mentioned in para A of the headnote of the plaint to defendant No.1 vide sale deed dated 20.12.1998. Plaintiff had no right, title or interest in the same. Family partition vide writing dated 20.11.1986 was also denied. Defendant No.2 further alleged that plaintiff filed a civil suit against him which was pending in the Court of Civil Judge (Junior Division), Dasuya. The suit property shown in para Nos. B and C of the headnote of the plaint was joint ownership of the plaintiff and answering defendant in equal shares. He also

alleged that he never relinquished or surrendered his right in the aforesaid property in favour of plaintiff vide writing dated 26.09.1995 as alleged. Dismissal of suit was prayed for.

[7]. Both the parties went to trial on the following issues:-

“1) Whether plaintiff is exclusive owner in possession of the property detailed in head note of the plaint? OPP

2) Whether sale deed dated 10.12.1998 executed by defendant No.2 in favour of defendant No.1 is illegal, void and ineffective, without authority and is not binding on the rights of plaintiff? OPP

3) Whether plaintiff is entitled to permanent injunction as prayed for? OPP

4) Whether suit is not maintainable? OPD

5) Whether plaintiff has no locus standi to file the present suit? OPD

6) Whether no cause of action has arisen to plaintiff to file the present suit? OPD

7) Whether present suit is barred under Order 2 Rule 2 CPC? OPD

8) Whether suit of plaintiff is not correctly valued for the purposes of court fee and jurisdiction? OPD

9) Whether defendant No.1 is bona fide purchaser for valued consideration without notice liable to be protected under Section 41 of Transfer of Property Act? OPD-1

10) Whether suit of plaintiff is barred by

principle of estoppel? OPD

11) Whether suit of plaintiff is bad for non compliance of Order 7 Rule 1 CPC? OPD

12) Relief.”

[8]. Both the parties led their respective evidence to prove their case. Issues No. 1 to 3 and 9 were of pivotal importance between the parties. Trial Court decreed the suit of the plaintiff vide judgment and decree dated 16.09.1998. Defendant No.1 remained unsuccessful in his appeal before the lower Appellate Court which was dismissed vide judgment and decree dated 10.01.2013. That is, how, the present Regular Second Appeal came to be filed by defendant No.1.

[9]. I have heard learned counsel for the appellant to some extent and have also perused the material on record.

[10]. Earlier suit qua para A of the property as shown in plaint along with other property was decreed by the civil Court at the instance of the plaintiff. The said judgment and decree were duly placed on record as Exs. PA and PB. After decision of the civil suit in favour of the plaintiff, the sale deed dated 10.12.1998 executed by defendant No.2 in favour of defendant No.1 cannot be held to be an act of bona fide besides the same being hit by doctrine of *lis pendens*. Plaintiff was declared to be owner in possession of property shown in para A of the plaint. The writing Ex.P1 was made by Hari Parkash who has appeared as PW 1

and was attesting witness of the same. The writing Ex.P1 was in consonance with the mutual partition which was done on 20.11.1986 and the portion falling under para A was duly endorsed by the civil Court while decreeing the suit as Exs. PA and PB.

[11]. The cross examination of defendant No.1 was also to the effect that the partition between the plaintiff and defendant No.2 took place and the sale deed dated 10.12.1998 was executed by defendant No.2 in favour of defendant No.1 wherein defendant No.2 did not verify regarding ownership of the land in the revenue record. The properties as mentioned in para Nos. B and C had no connectivity with the claim of defendant No.1 as he had no concern with these properties. Properties mentioned in para Nos. B and C were given to the plaintiff by defendant No.2 in lieu of property in District Kangra which was situated in *abadi* of the village. The family settlement/mutual partition supplemented by writing and decree of the suit made the defendant not to lead any evidence qua these properties during the trial.

[12]. The findings recorded by the Courts below on issues No.1 to 3 and 9 were the result of proper appreciation of evidence. The contention of defendant No.1 that in view of decision of earlier suit, the cause of action in the present suit

was hit by Order 2 Rule 2 CPC could not be appreciated inasmuch as that the earlier suit was in respect of suit property involving other properties as well. Defendant No.2 had alienated the suit property in favour of defendant No.2 during pendency of said suit, therefore, different causes of action were involved in the earlier suit as well as suit out of which the present appeal has arisen.

[13]. In considered opinion of this Court, no law point worth consideration is involved in the appeal. The appeal is found to be totally bereft of merits and the same is accordingly dismissed.

[14]. Since the main appeal is dismissed on merits, therefore, there is no need to pass any order in the application for condonation of delay.

22.08.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No