

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-93-2013(O&M)

Date of decision : 02.02.2016

Jogender Singh

... Appellant

Versus

Munni Devi and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Ashwani Kumar Bura, Advocate
for the appellant.

Mr.Ashwani Kumar Goel, Advocate
for respondent No.1.

Mr.Kanhiya Soni, Advocate
for respondent No.4.

REKHA MITTAL. J.

The present appeal has been directed against the judgment and decree dated 03.08.2012 passed by the Additional District Judge, Bhiwani, affirming the judgment and decree dated 17.12.2009 passed by the Civil Judge (Senior Division), Bhiwani whereby the suit filed by the plaintiff/appellant for prohibitory injunction has been dismissed.

The facts, in brief, are that the appellant filed a suit for injunction on the premise that he is owner in possession of 5/48 shares i.e. 7 kanals 19 marlas of land comprised in Khewat No.320 khatoni No.427/428 kitte 10 total measuring 76 kanals 12 marlas as per jamabandi for the year 1998-99 situated at village Mundhal Khurd, Tehsil and District Bhiwani. He entered into an agreement to purchase the said land

from Yudhbir Singh respondent No.3 vide agreement to sell dated 04.03.2004 for a sum of ₹1,80,000/- per acre and paid an amount of ₹90,000/- as earnest money to the vendor in the presence of Mahender Chaudhary, deed writer and witnesses put their signatures on the receipt. The date for registration of the sale deed was fixed as 15.09.2004. This fact was well within the knowledge of respondent No.1. Respondent No.3 has also given possession of the suit land to the appellant after harvesting the crops of Rabbi 2004.

On the basis of agreement to sell dated 04.03.2004, respondent No.3 had executed sale deed dated 10.09.2004 in favour of the appellant and received balance sale consideration of ₹89,000/-. The appellant is in possession of suit land and the respondents have no concern whatsoever with the suit land. Respondent No.3, in order to cause loss to the appellant sold the suit land in favour of respondent No.1 vide registered sale deed No.5284 dated 27.08.2004. The sale deed in favour of respondent No.1 is illegal, null and void and not binding upon the rights of the appellant as respondent No.3 had already entered into an agreement to sell the suit land in favour of the appellant and had also received an amount of ₹90,000/- towards earnest money. Respondent No.3 had no right to execute the sale deed No.5285 dated 27.08.2004 in favour of respondent No.1. Respondent No.3 was owner in possession of total land measuring 7 kanals 19 marlas but he has executed the sale deed dated 27.08.2004 regarding 160/1532 share of the land measuring 76 kanals 12

marlas i.e. 8 kanals 9 marlas. Respondent No.1 has got sanctioned mutation No.2797 dated 20.10.1994 in her favour which is also wrong and not binding on the rights of the appellant.

Respondents No.1 & 2 filed their joint written statement and in turn challenged maintainability of the suit. They averred that respondent No.3 was owner in possession of the suit land and he has sold the same to respondent No.1 vide sale deed dated 27.08.2004 and mutation No.2797 dated 21.10.2004 has already been sanctioned in her favour. Respondent No.1 is a bonafide purchaser of suit land for consideration and she had no knowledge of any such agreement to sell dated 04.03.2004. At the time of sale deed, no objection was raised by any person.

Yudhbir Singh respondent No.3 filed the written statement and admitted the factum of agreement to sell vide agreement dated 04.03.2004 for a sale consideration of ₹1,80,000/- per acre in favour of the appellant. He further admitted receipt of an amount of ₹90,000/- towards earnest money, execution of sale deed dated 10.09.2004 in favour of the appellant and receipt of balance sale consideration from him. It is averred that respondents No.1 & 2 are clever persons and they got sale deed executed on 27.08.2004 under the influence of liquor. The sale deed dated 27.08.2004 in favour of respondent No.1 is illegal, null and void and is liable to be set aside. He had not given possession of the suit land to respondent No.1 and he was not owner of 8 kanals land. He also raised

the plea that the sale deed propounded by respondent No.1 is the result of fraud and misrepresentation. In his counter claim, he pleaded that sale deed dated 27.08.2004 and mutation No.2797 sanctioned on the basis of sale deed are liable to be set aside.

Satbir Singh Patwari Halqa-respondent No.4 filed his separate written statement alleging that on the basis of sale deed dated 27.08.2004, executed by respondent No.3 in favour of respondent No.1, he entered mutation No.2797 dated 01.10.2004 and sale deed was verified on 18.10.2004 by Kanungo and sanctioned on 21.01.2004 by circle revenue officer (Deputy Tehsildar).

The appellant preferred replication to the written statement filed by respondents No.1, 2 & 4, reiterated his stand taken in the plaint and denied the averments made in the written statement.

The controversy between the parties led to framing of following issues by the learned trial Court:-

1. *Whether the plaintiff is entitled to the relief of injunction as prayed for?OPP*
2. *Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP*
3. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*
4. *Whether the plaintiff has no locus standi to file the present suit?OPD*
5. *Whether the plaintiff has not come to the Court with clean hands and has suppressed the material facts?OPD*
6. *Whether the suit of the plaintiff is bad for want of*

proper court fee?OPD

7. *Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD*

8. *Relief.*

The trial Court permitted the parties to adduce evidence in support of their respective claims.

The appellant examined Mahender Chaudhary, deed writer PW1, Karambir PW2 and himself appeared as PW3.

To rebut evidence of the appellant, Munni Devi-respondent No.1 examined herself (DW1), Chand Singh respondent No.2 appeared as DW2, Yudhbir Singh respondent No.3 appeared as DW5 and the two witnesses namely Ram Chander and Ved Pal were examined as DW3 and DW4.

On a careful and thorough consideration of the pleadings of the parties, issues framed for determination, evidence adduced on record and rival submissions made by respective counsel, the learned trial Court answered issues No.1 & 2 against the appellant and as a result, the suit was ordered to be dismissed. The appeal filed by the appellant did not find favour with the Additional District Judge, Bhiwani and the same was dismissed vide impugned judgment and decree dated 03.08.2012.

Counsel for the appellant/plaintiff would contend that the agreement to sell dated 04.03.2004 propounded by the appellant has been duly proved on record when otherwise execution thereof has been admitted by the proposed vendor respondent No.3 in the written

statement. Respondent No.3 also admitted the factum of receipt of earnest money of ₹90,000/- at the time of agreement to sell and balance sale consideration at the time of execution and registration of sale deed. It is vehemently argued that possession of the land, subject matter of the agreement, was delivered to the appellant after harvesting crops of Rabi 2004. According to counsel, the sale deed dated 27.08.2004 purported to be executed by respondent No.3 in favour of respondent No.1 has no adverse affect on the rights of the appellant to become owner in possession of the suit land, therefore, the courts below have committed a gross error rather illegality in non-suiting his claim.

It is further argued that sale deed No.5284 dated 27.08.2004 in favour of respondent No.1 is nothing but the result of fraud and misrepresentation played upon respondent No.3 from whom the sale deed was got executed under the influence of liquor despite the fact that respondent No.1 was aware of the agreement dated 04.03.2004 executed by respondent No.3 in favour of the appellant. It is argued with vehemence that sale deed dated 27.08.2004 was got executed in order to cause wrongful loss to the appellant who has paid an amount of ₹1,79,000/- to respondent No.3 on two occasions for transfer of rights in his favour.

Counsel for the contesting respondent No.1, while refuting contentions of the appellant, has submitted that Munni Devi respondent No.1 is a bonafide purchaser for consideration without notice of the

agreement to sell propounded by the appellant. It is further argued that as respondent No.3 alienated the suit land in her favour vide sale deed dated 27.08.2004, respondent No.3 was left with no right to transfer the suit land in favour of the appellant vide sale deed dated 15.09.2004. It is urged that as respondent No.3 was left with no right in the suit property which already stands alienated in favour of respondent No.1, the sale deed dated 15.09.2004 has no bearing on the rights of respondent No.1 when otherwise an agreement to sell does not confer any right of ownership in immovable property of value more than ₹100/-. It is further argued that respondent No.3 has concocted a cock and bull story that the sale deed dated 27.08.2004 was got executed from him under the influence of liquor. There is no material on record much less cogent convincing and clinching to substantiate plea of respondent No.3 that sale deed dated 27.08.2004 is the result of fraud or misrepresentation. The last submission made by counsel is that the appellant did not file a suit for declaration challenging the sale deed dated 27.08.2004 in favour of respondent No.1 and filed a simpliciter suit for injunction in regard to possession but he has failed to establish his possession over the suit land when admittedly possession was not delivered to him under the alleged agreement of sale dated 04.03.2004. The courts below have rightly accepted plea of respondent No.1 that she is a bonafide purchaser for consideration and without notice of the agreement to sell, therefore, the appellant is not entitled to grant of injunction, as prayed for.

I have heard counsel for the parties, perused the paper book

and records of the trial Court and Court in appeal.

Jogender Singh appellant has claimed ownership of the suit land on the basis of sale deed dated 15.09.2004. Indisputably, respondent No.3 had already executed sale deed dated 27.08.2004 in respect of suit land in favour of respondent No.1. Till the sale deed in favour of respondent No.1 is set aside by a competent Court of law, no plea of the appellant that he has become owner of the suit land on the basis of sale deed dated 15.09.2004 is tenable. There cannot be any dispute about the settled principle in law that no one can transfer a better right than what one has. As respondent No.3 has already alienated the suit land in favour of respondent No.1 vide sale deed dated 27.08.2004, he was left with no right in the suit property which could be transferred in favour of the appellant. Neither the appellant nor respondent No.3 has filed any suit to get the sale deed dated 27.08.2004 in favour of respondent No.1 set aside on any of the grounds whatever.

Respondent No.3 has raised a plea that sale deed dated 27.08.2004 is a result of fraud and misrepresentation and, therefore, liable to be set aside. Respondent No.3 has not filed any suit to challenge the sale deed when otherwise counter claim against a co-defendant may not be maintainable. Respondent No.1 has raised a categorical plea that she is a bonafide purchaser for consideration and without notice of the alleged agreement to sell dated 04.03.2004. She has reiterated her version in her statement on oath. There is no challenge to her statement in examination-in-chief that she made detailed inquiries from the Patwari, Lambardar and

registration officer and only thereafter she purchased the land. Counsel for the appellant is fair enough to concede that the appellant has failed to adduce any evidence on record to establish his plea that respondent No.1 had notice of agreement to sell dated 04.03.2004. During cross-examination of respondent No.1, no such fact has been elicited which can indicate that either she did not make proper inquiries much less she knew about the agreement to sell. Under these circumstances, I do not find any reason to interfere in the consistent findings recorded by the Courts below holding that respondent No.1 is a bonafide purchaser for consideration and without any notice.

Counsel for the appellant has failed to point out any materials on record to substantiate plea of the appellant that the appellant is in possession of the suit land and is entitled to seek injunction, as prayed for or the Courts below have committed any error much less illegality to non-suit his claim.

No other point has been raised.

In view of what has been discussed hereinabove, neither any substantial question of law, as has been sought to be raised or otherwise, arises for adjudication nor there is any error much less illegality in the concurrent findings recorded by the Courts. As a result, the appeal fails and is ordered to be dismissed with costs.

(REKHA MITTAL)
JUDGE

February 02, 2016.
Davinder Kumar