

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2133 of 2015 (O&M)
Date of Decision : 21.03.2016

Om Parkash

....Appellant

Versus

Rameshwar Dass and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Atul Lakhanpal, Senior Advocate
with Mr. R.S. Chahal, Advocate
for the appellant.

Surinder Gupta, J.

Suit property is 19 *marlas* of land in *khasra* No. 291 situated in village Dholu, *Tehsil* and District Fatehabad, which was earlier owned by defendant no. 1-Ram Gopal @ Paali Ram @ Doojpuri Maharaj son of Udey Ram. He sold the same to Jas Ram father of plaintiffs vide sale deed No. 2328 dated 11.11.1971. Plaintiffs have alleged that after purchasing the plot their ancestor constructed house thereon. Jas Ram died on 11.05.2005 and after his death plaintiffs inherited the suit property.

2. Defendant no. 2-appellant purchased the suit property from defendant no. 1 vide sale deed no. 16 dated 03.04.2008. On coming to know of this fact, plaintiffs filed this suit on 12.05.2008, seeking the relief of declaration of their title and possession over the suit property and challenging sale deed dated 03.04.2008, executed by defendant no. 1 in favour of defendant no. 2-appellant and also for relief of injunction to restrain the defendants from interfering in possession of plaintiffs.

3. Defendant no. 1 did not appear to contest the suit while defendant no. 2-appellant defended his title over suit property as per sale deed dated 03.04.2008, alleging that he had verified the

ownership over this plot at his own level from the villagers. Defendant no. 1 was in possession of the disputed plot and sought protection of his title under Section 41 of the Transfer of Property Act.

4. Both the Courts discarded the plea of defendant no. 2-appellant that he is *bona fide* purchaser of suit property and decreed the suit. The appellant has filed this regular second appeal against concurrent judgments of Courts below.

5. Learned counsel for the appellant has argued that plaintiffs-respondents claimed title over suit property on the basis of sale deed No. 2328 dated 11.11.1971. There was no evidence on record to show that they have ever got mutation of suit land sanctioned in their favour. They have also failed to prove their possession over suit property by producing any receipt of *chulha* tax, electricity bill or payment of water charges etc. Defendant no. 1 continued in possession of suit property. Sale deed dated 11.11.1971 was never acted upon. The Courts below have failed to look into this fact while decreeing the suit of plaintiffs.

6. Defendant no. 2-appellant had purchased the suit property from defendant no. 1, which he had sold to plaintiffs' father Jas Ram in the year 1971 i.e. 37 years before the sale in favour of defendant no. 2. The parties are resident of same village. The appellant has tried to take benefit of entry in *jamabandi* where defendant no. 1 was recorded as owner of suit property. This argument of learned counsel for the appellant that plaintiffs did not get the mutation of suit property sanctioned in their favour despite the lapse of 37 years of purchase of plot is immaterial as suit property is situated in *abadi* area. In villages residents are always

aware of happenings in village and it cannot be believed that for 37 years father of plaintiffs was owner of suit property and appellant was not aware of this fact. In order to strengthen his plea about possession over suit property, defendant no. 2-appellant tried to prove on record that after purchase of suit property from defendant no. 1, he pulled on *kachha* house of defendant no. 1, which was existing there and raised *pucca* construction. The sale deed in favour of appellant was executed on 03.04.2008. Mutation was sanctioned on 16.04.2008 and within a month this suit was filed. Learned Civil Judge (Senior Division), Fatehabad discarded this argument of learned counsel for the appellant with observation that in the sale deed disputed property is mentioned as a plot and not as a *kachha* house.

7. Learned Ist Appellate Court also considered this contention of appellant that he is *bona fide* purchaser and discarded the same with the observation as follows:-

“.....However, this Court is unable to accept this argument of learned counsel for appellant/defendant no. 2. However, on perusal of cross-examination of appellant Om Parkash, it is seen that he has admitted that he had not paid any fee to Patwari for checking the record regarding the suit property and he was also unable to prove the source of payment of money while purchasing the suit property. To prove the purchase of the suit property, it was necessary for him to prove the payment of sale consideration amount but neither the defendant himself nor any other witness examined by him including his neighbour Bhup Singh DW-5, attesting witness Radhey Sham who appeared as DW-4 and R.P. Mawlia, Advocate who appeared as DW-6 have been able to prove the payment of consideration amount by appellant/defendant no. 2 to the vendor/defendant no. 1

as they have simply stated that he had admitted that he paid sale consideration amount but no sale consideration amount was paid by him in their presence. So, appellant/defendant no. 2 has failed to show that he is bona fide purchaser for consideration.”

8. From the case set up by the appellant himself, it appears that there was construction over suit property, as such, entries in *jamabandi* which are usually for fiscal purposes have no relevance regarding title over suit property. If defendant no. 1 had defrauded the appellant by making him purchase the suit property under wrong representation, remedy is available to the appellant to proceed against defendant no. 1. However, the title and possession of plaintiffs over suit property in no manner is effected by subsequent sale deed.

9. In view of my above discussion, I find no legal or factual infirmity in judgments of Courts below calling for any interference. No substantial question of law, requiring determination arises in this appeal, which has no merits.

Dismissed.

March 21, 2016
jk

(SURINDER GUPTA)
JUDGE