

RSA No.3944 of 2016 (O&M)

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

**RSA No.3944 of 2016 (O&M)
Date of decision:30.09.2016**

Hukam Singh

... Appellant

Vs.

Sanjay Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjay Verma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.10198-C-2016

For the reasons stated in the application, duly supported by an affidavit, delay of 62 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.3944 of 2016 (O&M)

Appellant-defendant No.1 is aggrieved of the concurrent findings of facts and law, whereby, the suit seeking following relief has been decreed by both the Courts below, which reads thus:-

“plaintiff is owner in possession of the land measuring 2 kanal 2 marla, i.e., 1270 sq. yards out of rect.no.13 killa 6 and 7/1 situated in revenue estate of village Gobindpura, Tehsil and District Jind, shown in red colour in the site plan attached bounded as under:-

East : 79 plot of others lying vacant

West: 83' Gali

North: 112' property of Citizen School

South 170'-6' House of other, gali and open plot

And in consequential relief of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff on the above land and from raising any type of construction.”

Mr. Sanjay Verma, learned counsel appearing on behalf of the appellant-defendant No.1 submits that suit of the respondent-plaintiff was not maintainable as Ram Bilas had mortgaged 1 kanal 10 marlas of land with HFC vide rapat No.433 dated 22.06.2006. Out of total land measuring 2 kanals 2 marlas, two deeds of additional security, i.e., deed no.904 dated 16.06.1994 and 2124 dated 22.11.1994 were got registered in the office of Sub Registrar, Jind. The appellant is none-else but a bonafide purchaser who had purchased the property by virtue of the auction held on 30.07.2006 conducted by HFC on account of non-payment of installment, therefore, was not aware of the same and on this ground, the sale deed could not have been set aside.

I have heard learned counsel for the appellant and appraised the judgments and decrees of the Courts below.

It is a fact that as per Ex.P2, Ram Bilas son of Mussadi Lal on 22.07.1985 had died in Gangtok and Ex.P3 shows that suit land on 05.06.1989 was sold by legal heirs of Ram Bilas through power of attorney Inder Sain Goyal son of Moti Ram Goyal to the plaintiff, whereas, deed of

additional security, Ex.DW3/B alleged to be executed by Ram Bilas as well as by Inder Sain is dated 21.11.1994. At that time, Ram Bilas was not alive. The sale deed, Ex.P3 has been proved through Vijay Kumar, PW4. The sale deed is of 06.04.1989. PW5 -Moji Ram being attesting witness has also signed the same. The defendants have not stepped into witness box. Even HFC has also not proved the factum of sale and therefore, the Courts below have formed an opinion that the plaintiff was bonafide purchaser of the land and defendant No.3 cannot be blamed. I am in agreement with the aforementioned finding.

Since the appellant had been deprived of the land, he is entitled to recover the amount from HFC in accordance with law but the fact remains that the alleged mortgage executed by Ram Bilas is of 2006, which was neither here nor there as he died on 22.07.1985.

Both the Courts below after appreciating the oral and documentary evidence, decreed the suit. In my view, the finding vi-a-vis recovery of amount from HFC, is hereby upheld.

No ground is made out for interference in the judgments and decrees under challenge.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

September 30, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No