

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

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Regular Second Appeal No.2882 of 2015 (O&M)

Date of Decision: January 21, 2016

Ram Kishan and others

...Appellants

Versus

Devi Prassan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vikrant Rana, Advocate and
Mr. Sumit Sangwan, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 03.11.2014 passed by the District Judge, Bhiwani, wherein the appeal of the respondents-defendants preferred against the judgment and decree dated 22.12.2011 passed by the Additional Civil Judge (Senior Division), Bhiwani, has been allowed by setting aside the same, whereby the suit for declaration preferred by the appellants-plaintiffs to the effect that they were joint owners in possession of the share of defendant No.1 as well as the residential house owned by the said defendant on the basis of the judgment and decree dated 07.04.1993 passed in Civil Suit No.201 of 1993 by the Civil Judge (Senior Division), Bhiwani, and the defendants have no right, title or concern with the same and the appellants-plaintiffs were entitled to get enter the names in the revenue record on the basis of the said decree was accepted.

2. It is the contention of learned counsel for the appellants that on the basis of the judgment and decree dated 07.04.1993, the appellants-plaintiffs became the owners of the property. He contends that merely because the mutation was not got entered on the basis of the said

judgment and decree would not divest the appellants-plaintiffs of the ownership of the property. They would continue to be the owners of the property irrespective of the entry in the revenue record. The findings, thus, recorded by the Courts below that because of the non-entry in the revenue record about the factum of decree, respondents 2 and 7 being the *bona fide* purchasers, the sale in their favour is protected under Section 41 of the Transfer of Property Act, 1882, cannot sustain and deserve to be set aside. Prayer has thus been made for setting aside the impugned judgment passed by the learned District Judge, Bhiwani and restoring the judgment and decree passed by the trial Court.

3. I have considered the submissions made by learned counsel for the appellants and with his assistance, have gone through the impugned judgment.

4. It is not in dispute that the judgment and decree dated 07.04.1993 is in favour of the appellants-plaintiffs nor is it in dispute that the revenue record continued to be as it existed prior to the decree having been passed, meaning thereby that the mutations which were required to be incorporated and sanctioned in the revenue record was not done by the appellants-plaintiffs. The revenue record, therefore, reflected the original owner namely Lok Ram as owner in possession of the suit property. Respondents-defendants 2 and 7 have been able to prove that they had purchased the said suit land after verifying the revenue records. In the light of this factual position, the findings as recorded by the Court below relying upon the provisions as contained under Section 41 of the Transfer of Property Act, 1882, cannot be said to be not correct. Therefore, no illegality has been committed by the learned Lower Appellate Court which would call

for any interference by this Court in the present appeal.

5. There is no merit in the present appeal and, therefore, the same stands dismissed, specially when no question of law arises for consideration of this Court.

6. In the light of the dismissal of the appeal, the application for stay i.e. CM No.7023-C of 2015, stands disposed of as infructuous.

January 21, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE