

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

**C.M. NO.1122 C OF 2015 &
R.S.A. NO.406 OF 2015**

DATE OF DECISION: MARCH 03, 2016

Bhupinder Singh and another

.....Appellants

VERSUS

Jagir Singh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. S. K. Arora, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 21.08.2013 passed by the Civil Judge (Senior Division), Ferozepur, whereby the suit for declaration that the appellant-plaintiffs are owners in possession of the land measuring 23 kanals 9 marlas, as detailed in the plaint, situated in Village Chapati, Tehsil and District Ferozepur, on the basis of sale deed dated 05.11.1998 executed by Balwinder Singh, who was recorded as the owner in possession of the suit property in the revenue record and for permanent injunction for restraining the respondent-defendants from interfering in the peaceful possession of the suit land of the appellant-plaintiffs, was dismissed with regard to the declaration. However, injunction was granted in favour of the appellant-plaintiffs, restraining the

respondent-defendants from interfering in the peaceful possession of the appellant-plaintiffs, except in due course of law, appeal against which preferred by the appellant-plaintiffs has been dismissed by the Additional District Judge-III, Ferozepur, on 10.10.2014.

It is the contention of learned counsel for the appellants that the appellant-plaintiffs are the bonafide purchasers as they, at the time when the sale deed was to be executed, had verified from the revenue record as to who was the owner of the property and on the basis thereof, they came to know that Jagir Singh was the owner of the property, who, through a transfer deed, had made Balwinder Singh as owner of the property. The said transfer deed is dated 01.12.1994, on the basis of which mutation was sanctioned in favour of Balwinder Singh. Believing the revenue record to be correct, the appellant-plaintiffs proceeded to buy 23 kanals 9 marlas of land vide sale deed dated 05.11.1998 (Ex.P2). On the basis of the said sale deed, mutation was also sanctioned in the name of appellant-plaintiffs. He, thus, contends that the appellant-plaintiffs, being the bonafide purchasers, are protected under Section 41 of the Transfer of Property Act, 1882 (for short, "1882 Act"). He asserts that Jagir Singh had two sons, namely, Balwinder Singh and Mohinder Singh, who had died earlier. Legal heirs of Mohinder Singh i.e. the contesting respondents challenged the transfer deed dated 01.12.1994 vide which Jagir Singh had transferred the land in favour of his other son, Balwinder Singh, asserting therein that it was an ancestral land, which could not have been so transferred by Jagir Singh, excluding the claim of deceased son, Mohinder Singh and his L.Rs, who had stepped into his shoes. The said suit was filed on 12.12.1994, which was dismissed by the trial Court on 27.07.2002, appeal against which preferred, was allowed

by the Appellate Court on 13.10.2005, wherein the transfer deed dated 01.12.1994 was held to be null and void and the legal heirs of Mohinder Singh were declared owners to the extent of 1/3rd share in the suit property. He contends that in these proceedings the appellant-plaintiffs were not party and, therefore, the inter-se dispute between the parties would not bind them, especially the findings as have been recorded therein. He, thus, contends that the Courts below have erred in law in relying upon the said findings to hold that the property was ancestral and, therefore, the same could not have been transferred in favour of Balwinder Singh. Consequently the sale deed dated 05.11.1998 in favour of the appellant-plaintiffs, transferring the title in their favour, would not be binding and, thus, a declaration, as prayed for, could not be granted. He, thus, contends that the impugned judgments and decree passed by the Courts below cannot sustain and deserve to be set-aside and the suit of the appellant-plaintiffs decreed in toto.

I have considered the submissions made by learned counsel for the appellants and with his able assistance have gone through the impugned judgments but do not find myself in agreement with him.

The facts, as have been narrated above and as projected by the counsel, are not in dispute. The basic contention, which has been pressed by learned counsel for the appellants is that the appellant-plaintiffs are the bonafide purchasers and, therefore, are protected under Section 41 of 1882 Act. The said plea would have been accepted, had the transfer deed dated 01.12.1994 and the consequent sale in favour of the appellant-plaintiffs, being in accordance with law. Further perusal of the facts would show that the moment the transfer deed was executed in favour of Balwinder Singh by Jagir Singh on 01.12.1994, immediate steps were taken by the legal heirs

of Mohinder Singh to challenge the same through a civil suit on 12.12.1994.

Had the appellant-plaintiffs been cautious enough in verifying the true nature and status of the property and not merely relied upon the revenue entries, the position would have been different and they would not have gone for the purchase of the property. Therefore, in the light of the facts and circumstances of this case, the Courts have rightly not given much credence to the aspect of they being bonafide purchasers. Admittedly, as per the findings given by the Courts below, the land was ancestral in the hands of Jagir Singh. If that be so, the transfer deed in favour of Balwinder Singh could not have been executed. The findings, thus, cannot be faulted with.

The plea of the counsel for the appellants that the appellant-plaintiffs were not party to the suit in which the transfer deed was challenged, suffice it to say that principle of *lis pendens* would apply and they would sail or drown with the vendor as they had stepped into his shoes. Since the vendor did not have a title to transfer the said suit property, the declaration, as has been prayed by them, has rightly been declined by the Courts below. The findings, as recorded by the Courts below, thus, cannot be faulted with as the same are based upon proper appreciation of the pleadings, evidence and law.

No other point has been argued by learned counsel for the appellant-plaintiff.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.1122 C of 2015 for restraining the respondents from alienating the land in dispute is also dismissed.

**March 03, 2016
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**(AUGUSTINE GEORGE MASIH)
JUDGE**