

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3262 of 2014 (O&M)
Date of Decision.19.01.2016

Amarjit Singh and others

.....Appellants

Vs.

Gurdeep Singh and others

.....Respondents

Present: Mr. Upender Prasher, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. The defendants are the appellants before this Court. The suit had been filed by one Kabul Singh and Gurdeep Singh contending that a sale effected by one Kulwant Kaur in favour of her son Bhupinder Singh was not valid beyond the share of what she was entitled to and that further the sale by Bhupinder Singh in favour of the present appellants was also not valid more than the extent which the vendor was entitled to. Kulwant Kaur was the widow of Karaj Singh who was himself the son of Darshan Singh, brother of the plaintiffs. Karaj Singh died and Kulwant Kaur married Karaj Singh's brother Satnam who was yet another son of Darshan Singh, the brother of the plaintiffs. Kulwant Kaur claimed the property as the property inherited by her through her father-in-law and claimed that she was entitled to 11 kanals 16 marlas of land. It appears that after the sale in favour of her son Bhupinder Singh, the revenue entry had also been mutated for the said extent. On the

basis of entries found in the revenue records, the present appellants have purported to have purchased the property on 8.8.2003.

2. The suit was filed to claim that the vendor was entitled only to 2 kanals 8 marlas of land and the sale in excess of the property cannot bind them. The two Courts below in the course of trial had also found that the plaintiffs have also obtained some rights in the property through the sale from Udham Singh, the father which was an additional proof for the contention that the vendor Bhupinder Singh or the predecessor Kulwant Kaur did not have right to the property to the extent which was purported to be conveyed through the sale deed. The Court found the plea of bona fides of purchase by the present appellants could not be sustained for any share more than what they were entitled to.

3. Learned counsel appearing for the appellants has two contentions to make before me that the appellants are the bona fide purchasers and they should be protected under Section 41 of the Transfer of Property Act. The doctrine of bona fide purchaser under Section 41 is thoroughly misplaced, for it can only protect a person who is the purchaser from the ostensible owner of property when the real owner stakes a claim. If the ostensible owner is himself entitled to a lesser extent of what he is entitled to, there is no question of bona fides nor application of Section 41 of the Transfer of Property Act possible.

4. It is also contended that the plaintiffs made reference to the purchase from Udham Singh only during the cross-examination and it was not set out in the body of the plaint. If it ultimately happens that the plaintiffs are able to show to their entitlement to the property which

they were claiming and were also able to show that the vendor Kulwant Kaur or Bhupinder Singh had no right to the extent of property which had been claimed by them then the matter must rest there and there can be no argument that the fact of purchase by the plaintiffs from their father had not been referred to in the pleadings. Unless the defendants are able to show that plaintiffs had not proved their entitlement to the extent which they claimed, they will not be able to fend off an action impugning the sale to the extent which is mentioned in the document.

5. The trial Court and the Appellate Court have correctly come to the conclusion to allow for the decree for the extent of the property for which the plaintiffs showed their entitlement and the defendants could not be protected for a purchase of an extent larger than what their vendors were entitled. The Courts below have already protected the appellants to the extent of the property which they were entitled to. The judgments of the Courts below are correct and there is no substantial question of law involved in the second appeal for interference. The second appeal is dismissed.

(K. KANNAN)
JUDGE

January 19, 2016
Pankaj*