

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.9421 of 2016
Date of Decision: 01.03.2017

Sukhdev Singh ..Petitioner

versus

State Bank of India and others ..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. R.K. Dhawan, Advocate
for the petitioner.

Mr. Adrash Jain, Advocate,
for respondent no.1.

Mr. Kawaljyot Singh, Advocate,
for respondent no.7.

RAMENDRA JAIN, J.

1. The petitioner sold 04 Kanals of land falling in the revenue estate of village Nangal, Tehsil Phillaur, to respondent nos. 3 to 6, vide registered sale deed dated 13.10.1997 (Annexure P-1) who further mortgaged the said land to respondent no.1-bank for obtaining of Cash Credit Limits of ₹ 04 lakh and Medium Term Loan of ₹ 3,75,000/- for the purchase of machinery and working capital by depositing the original sale deed dated 13.10.1997 (Annexure P-1) as collateral security for the repayment of the due amount. However, the petitioner, out of the aforesaid sold land of 04 Kanals, re-purchased 02 Kanals of land vide registered sale deed dated 16.10.1998 (Annexure P-2) from respondent nos. 5 and 6 and 01

Kanal from one Satnam Singh son of Kartar Singh, to whom respondent no.2 had sold the same through his attorney Surjit Singh, vide registered sale deed dated 01.01.2003 (Annexure P-3). Since respondent nos. 3 to 6 did not adhere to the financial discipline, therefore, respondent no.1-bank filed a civil suit for recovery against them, which was decreed vide judgment and decree dated 21.04.2003 passed by the Civil Judge (Junior Division), Phillaur and on the basis thereof, respondent no.1-bank filed O.A. No.1128 of 2006 on 07.04.2008 before the Debt Recovery Tribunal-II (Punjab), Chandigarh, for the total recovery of ₹ 14,62,898.50P. The Debt Recovery Tribunal-II (Punjab), Chandigarh, allowed the said original application. Accordingly, the recovery certificate dated 07.04.2008 was issued and the property was put to auction for 18.02.2009 by respondent no.1-bank. The petitioner, on coming to know of the above fact, filed objections dated 10.2.2009 (Annexure P-5) before the Debt Recovery Tribunal (Punjab), Chandigarh, who, vide order dated 17.4.2009 (Annexure P-6), dismissed the same and confirmed auction in favour of respondent no.7. Against the aforementioned order, the petitioner preferred an appeal dated 11.05.2009 (Annexure P-7) before the Debts Recovery Tribunal-II (Punjab), Chandigarh, which too was dismissed vide order dated 07.09.2010 (Annexure P-8) by holding that respondent no.7 was a bona fide auction purchaser of the land in dispute for valuable consideration and was also in cultivating possession of the same. Being aggrieved, the petitioner filed Civil Writ Petition No.19571 of 2010 before this court, challenging the order dated 07.09.2010 (Annexure P-8) passed by the Debts Recovery Tribunal-II (Punjab), Chandigarh, which finally was got dismissed as withdrawn vide order dated 27.09.2011 (Annexure P-9) with liberty to avail

the remedy of appeal as provided under Recovery of Debts & Dues to Banks and Financial Institution Act, 1993. The petitioner preferred an appeal, in October, 2011 (Annexure P-10) before the Debt Recovery Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") and simultaneously, on 09.08.2012, filed a civil suit for declaration and permanent injunction for cancellation of instrument of sale deed dated 12.10.2010 under section 31 of the Specific Relief Act, 1963, which was still pending adjudication. Respondent nos.1 and 7 filed their respective replies, but respondent nos. 2 to 6 did not opt to file any reply and got themselves proceeded ex parte. The Tribunal, after hearing both the sides, dismissed the appeal filed by the petitioner vide order dated 09.11.2015 (Annexure P-13), negating the plea of the petitioner of a bona fide purchaser. It is against this order that the petitioner has come up before this court.

2. By way of the instant writ petition under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 09.11.2015 (Annexure P-13) passed by the Tribunal and also to set aside the auction sale in favour of respondent no.7 and to declare the petitioner as owner and in cultivating possession of the land in dispute. In the alternative, the petitioner has also offered to make payment of the auction amount, as also the incidental expenses with liberty to recover the same from respondent nos. 2 to 5.

3. Learned counsel for the petitioner contended that respondent nos.3 to 6, in connivance with respondent no.1-bank, played a fraud upon the petitioner by not getting entered and sanctioned the mutation qua mortgage of the land in dispute against obtaining the term loan and Cash

Credit Limits. He has further strenuously argued that since no such mutation qua the alleged mortgage was got entered and sanctioned, therefore, there was no occasion for the petitioner to come to know about the same and thus, the objections and the appeal filed by him have wrongly been dismissed while negating his plea of a bona fide purchaser by the Debt Recovery Tribunal II, Chandigarh. Learned counsel for the petitioner has further laid much stress on the point that since the mutation was not got entered qua mortgage of the land in dispute, therefore, the jamabandi, which is the record of title and conclusive proof of ownership in the agricultural land, kept on continuing in favour of respondent nos. 3 to 6 and, thus, treating them as owners, the petitioner, under bona fide belief, re-purchased 03 Kanals of land from them or their subsequent vendor. He has lastly contended that the learned Tribunal committed a grave error in dismissing the appeal filed by the petitioner by not considering this legal aspect that respondent nos. 3 to 6 in connivance with respondent no.1-bank, had committed a fraud upon the petitioner. In support of his arguments, learned counsel for the petitioner placed reliance upon the decision rendered in the case of **S.P. Chengalvaraya Naidu (Dead) by LRs versus Jagan Nath (dead) by LRs and others** (1994) 1 Supreme Court Cases 1.

4. On the other hand, learned counsel for the respondents jointly refuted the submissions raised by learned counsel for the petitioner by contending that the impugned order is well reasoned and does not warrant any interference, inasmuch as the petitioner was not a bona fide purchaser and no fraud, whatsoever, as alleged, was ever committed upon him by any of the respondents. Respondent no.7 is a bona fide auction purchaser of the land in dispute and as such, he has got a superior right over the

petitioner. In the end, it is prayed that the writ petition, bereft of any merit, deserves to be dismissed.

5. After giving our thoughtful consideration to the contentions raised by learned counsel for the parties, we find that the instant writ petition is completely lacking any merit.

6. Undisputedly, the petitioner himself had sold 04 Kanals of land to respondent nos. 3 to 6 and further re-purchased 02 Kanals from respondent nos. 5 and 6 and 01 Kanal from one Satnam Singh, their vendee. Admittedly, the petitioner had executed the registered sale deed dated 13.10.1997 (Annexure P-1) in favour of respondent nos. 3 to 6 and thus, he was well aware of the existence of the same. It is also an admitted position that the petitioner even did not bother to ask respondent nos. 3 to 6 to hand over the original sale deed dated 13.10.1997 (Annexure P-1) which he had executed in their favour. Non-asking or non-obtaining the original sale deed dated 13.10.1997 (Annexure P-1) by the petitioner from respondent nos.3 to 6 amounts to gross negligence on his part and thus, the petitioner cannot, by any stretch of imagination, be termed as bona fide purchaser of the land in dispute. Much stress has been laid by learned counsel for the petitioner on the point that since the mutation was not got entered and sanctioned qua mortgage of the land in dispute by respondent nos. 3 to 6 in favour of respondent no.1-bank, therefore, treating respondent nos. 3 to 6, as legally owner of the land in dispute and under bona fide belief, the petitioner had purchased 03 Kanals of land from them. However, this plea raised by the petitioner has no legs to stand, inasmuch it is well settled by now that the revenue entries in the jamabandis or in the mutation are not the documents of title. These documents are maintained for fiscal purposes

only to carry out the necessary changes to keep the record up-to-date. More so, the sale deed qua 01 Kanal of land vide registered sale deed dated 1.1.2003 (Annexure P-3) was hit by the doctrine of lis pendens, because of filing of a civil suit for recovery by respondent no.1-bank against respondent nos. 3 to 6 on 16.7.2001 and thus, the petitioner cannot, from any angle, be declared as owner of the land in dispute. Simply because the entry qua mortgage in favour of the respondent-bank was not incorporated in the revenue records would not be sufficient to dislodge the respondent-bank of its legitimate right in the land in dispute on the basis of mortgage which was validly created in its favour. Had the petitioner, while repurchasing the suit land, asked the vendors about the original sale deed, in that eventuality, he would have certainly come to know about the mortgage of the land in dispute.

7. There is no quarrel with respect to the propositions of law laid down by the Apex Court in the given facts and circumstances as projected in S.P. Chengalvaraya Naidu (Dead) by LRs's case (supra), on which reliance has been placed by learned counsel for the petitioners in support of his case. We find that the facts and circumstances, as given in the aforementioned case, being based on its own factual matrix involved therein, are entirely different from the facts of the case in hand and as such, are of no assistance to the petitioner.

8. For the reasons recorded hereinabove, we do not find any impropriety or illegality in the impugned order dated 09.11.2015 (Annexure P-13) passed by the Tribunal, which may warrant interference, while exercising extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India.

9. Petition is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

01.03.2017
VK

(AJAY KUMAR MITTAL)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether reportable | Yes/No |