

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.278 of 2016
Date of decision:2.5.2017**

Baldev Raj Sharma

...Appellant

Versus

Smt.Kanta Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Vipin Mahajan, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Defendant No.11 is in regular second appeal against the impugned judgment of reversal, whereby first appeal of the plaintiff-contesting respondent No.1 in her suit for declaration and permanent injunction, on the basis of her right of inheritance, was allowed by the learned District Judge.

Brief facts of the case, as noticed by the learned first appellate Court in paras 2 and 3 of its impugned judgment, are that plaintiff Kanta Devi filed a suit for declaration against defendants Janak Singh and others on the averments that Dharmu son of Buta Ram was original owner in possession of land measuring 72 kanals 14 marlas, which was in dispute in this case. He died unmarried and issueless on 25.05.1972. Deputi Ram was his brother, whereas Melo Devi and Buban Devi were his sisters. After death of Dharmu, his estate was inherited by his brother and sisters. Deputi Ram died in the year 1975. Buban Devi died on 01.08.1982. Plaintiff was

the only daughter of Buban Devi. Defendant No. 1 Janak Raj and defendant No. 2 Kamal Singh were sons of Melo Devi. Defendants No. 7 to 9 were legal heirs of Deputi Ram. Plaintiff through her mother Buban Devi was having 1/3 share in the land in dispute, whereas the legal heirs of Deputi Ram were also having 1/3rd share in the land in dispute. After death of Dharnu all of his legal heirs were owners in possession to the extent of their shares.

It came to the notice of the plaintiff that in the year 1995 Melo Devi, in connivance with revenue officials, got mutation of inheritance of the estate of Dharmu sanctioned only in her name. Such mutation was illegal and void. On the basis of such mutation, she executed sale deed dated 15.05.1998 in favour of defendant No. 11. Such a sale deed was also illegal to the extent of share of the plaintiff and legal heirs of Deputi Ram. The mutation of transfer of ownership on the basis of such sale deed of entire land was also illegal. The defendants threatened to dispossess the plaintiff from the joint possession and defendant No. 11 also threatened to execute the sale deed of the entire land for which he had no right. Such sale deed was collusive, fraudulent and without consideration. Defendants refused to admit the claim of the plaintiff. Hence such suit for declaration to the effect that the plaintiff was owner in possession of 24 kanals 5 marlas i.e. 1/3rd share of the total land measuring 72 kanals 14 marlas and further that sale deed dated 15.05.1998 executed by Melo Devi in favour of defendant No.11 Baldev Raj Sharma was illegal and void to the extent of her share and mutation sanctioned in favour of Melo Devi and defendants were illegal and void having no effect upon the right of ownership of the plaintiff to the

extent of 1/3rd share in the land in dispute. Relief of permanent injunction restraining the defendants from ousting the plaintiff from the joint possession had also been claimed and also that defendants should not change the nature of the suit land and further not to alienate further land to the extent of her share or in the alternative relief of possession of the land in dispute had also been sought.

Having been put to notice, defendants No. 1 to 6 appeared and filed their joint written statement, contesting the suit. Defendant No.7 filed his separate written statement, admitting the claim put forth by the plaintiff. Defendant No.11 filed his own written statement, claiming himself to be the bonafide purchaser. Plaintiff filed her replications to the written statements.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

- (1) Whether the plaintiff is owner in possession of the suit land ?OPP
- (2) Whether the plaintiff is entitled to declaration as prayed for ?OPP
- (3) Whether the suit is not maintainable in its present form ? OPD
- (4) Whether the plaintiff is estopped by her own act and conduct from filing the present suit ?OPD
- (5) Whether the plaintiff has no locus standi to file the present suit ?OPD
- (5-A) Whether the defendant no.1 is bonafide purchaser of the suit land without notice and with consideration, if so its

effect ?OPD

(6) Relief

With a view to substantiate their respective stands taken, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove her case. Accordingly, suit for declaration and permanent injunction filed by the plaintiff was dismissed by the learned trial Court, vide its judgment and decree dated 21.4.2003.

Feeling aggrieved, plaintiff filed her first appeal, which came to be allowed by the learned District Judge, vide his impugned judgment and decree dated 30.5.2015. Defendant No.11-appellant was not found to be a bonafide purchaser. Judgment and decree passed by the learned trial Court were set aside. Suit of the plaintiff was decreed and she was held joint owner in possession of the land in dispute to the extent of 1/3rd share. Mutation order Ex.P5 was declared illegal and void to the extent of 1/3rd share and it was held not binding upon the right of the plaintiff. Further, sale-deed Ex.D1 executed by Smt.Melo Devi through her attorney to the extent of 1/3rd share of the plaintiff in favour of defendant No.11 was also held illegal and void, holding that sale-deed shall not confer any title on defendant No.11 to the extent of share of the plaintiff. It was so held by the learned District Judge, vide his impugned judgment and decree dated 30.5.2015. Hence this regular second appeal, at the hands of defendant No.11.

Heard learned counsel for the appellant.

Relationship between the parties is not in dispute. Appellant-defendant No.11 was not from the family of plaintiff and other respondents. He claimed to have purchased the land measuring 72 kanals and 14 marlas vide sale deed Ex. D1 dated 15.5.1998 from Smt.Melo Devi daughter of Buta Ram, including $\frac{1}{3}$ rd share of plaintiff in the property left behind by Late Sh.Dharmu @ Dharam Singh. However, appellant-defendant No.11 could not prove himself to be a bonafide purchaser for valuable consideration, because he could not prove even the payment of sale consideration by producing cogent and convincing evidence.

Buta Ram was the common ancestor of plaintiff and other defendants. Buta Ram had three sons namely Melo Ram, Deputi Ram and Dharmu @ Dharam Singh. He had two daughters namely Melo Devi and Buban Devi. Sh.Melo Ram died first. Thereafter Dharmu @ Dharam Singh died on 28.5.1972 unmarried and issueless. It is the estate left behind by Dharmu, which was subject matter of dispute. Estate of Dharmu was to be inherited by his brother Deputi Ram and two sisters Smt.Melo Devi and Smt.Buban Devi. Later on Shri Deputi Ram died in the year 1975. Smt. Buban Devi expired on 1.8.1982. Plaintiff being the daughter of Smt.Buban Devi, put forth her claim for $\frac{1}{3}$ rd share in the estate left behind by Late Shri Dharmu, as per the relevant provisions of law contained in Hindu Succession Act.

It has also gone undisputed before this Court that after the death of Shri Dharmu, his estate was to be inherited by his living brother Deputi Ram and two sisters namely Smt.Buban Devi-mother of the plaintiff and Smt.Melo Devi, to the extent of $\frac{1}{3}$ rd share each. Accordingly, plaintiff

was to inherit that 1/3rd share through her mother Smt. Buban Devi. Once there was no dispute about the right of inheritance of the plaintiff to the extent of 1/3rd share in the estate left behind by Shri Dharmu, who died unmarried, issueless and intestate, suit of the plaintiff was bound to be decreed as it was based on her right of inheritance.

It has also gone undisputed before this Court that Smt.Melo Devi had sold the share of plaintiff as well to defendant No.11, which was to be inherited by the plaintiff to the extent of 1/3rd share from the property left behind by Shri Dharmu @ Dharam Singh. Once the vendor of defendant No.11-appellant was not the owner of entire land sold by her to the appellant vide sale deed Ex.D1, said sale deed was liable to be declared null and void to the extent of 1/3rd share of the plaintiff in the estate left behind by Dharmu. That is what has been rightly held by the learned District Judge, while passing the impugned judgment and decree and the same deserve to be upheld.

Since the learned trial Court failed to appreciate the above-said undisputed right of inheritance of the plaintiff to the extent of 1/3rd share in the property left by Late Shri Dharmu @ Dharam Singh, the learned District Judge rightly set aside the judgment of the learned trial court. It is so said because this right of inheritance of the plaintiff was not disputed by the learned counsel for the appellant, even before this Court, and rightly so, it being a matter of record. Under these undisputed facts and circumstances of the case, patently illegal and perverse findings recorded by the learned trial court were not sustainable and the same were rightly set aside by the learned District Judge, while passing his impugned judgment and decree dated

30.5.2015, which deserve to be upheld, for this reason also.

Once the vendor of the appellant was not the owner of the land to the extent of 1/3rd share of the plaintiff in the property left behind by Late Shri Dharmu @ Dharam Singh, she was incompetent to pass any better title in favour of defendant No.11. Further, when a specific issue No.5A was framed by the learned trial Court to the effect whether defendant No.11 was a bonafide purchaser of the suit land without notice and with consideration, it was for the appellant to prove his pleaded case by leading cogent and convincing evidence. However, he failed to do so for want of sufficient evidence in this regard.

Since Smt.Melo Devi was entitled to inherit the estate of her brother Late Shri Dharmu @ Dharam Singh only to the extent of 1/3rd share, mutation in her name beyond that share would also be patently illegal. Such mutation sanctioned contrary to natural succession, would be of no consequence. It is the settled proposition of law that mutation does not confer any title. Similarly, any oral relinquishment in favour of Smt.Melo Devi allegedly by Deputi Ram and Buban Devi would be of no consequence. In fact, it seems that it was a made up story put forth, which could not have been proved. There was no material available on record to support such an alleged oral relinquishment. In this view of the matter, it can be safely concluded that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this

Court:-

- 1. Dina Ji and others Vs. Daddi and others, 1990 CCC 407 (SC);**
- 2. Yellapu Uma Maheswari and another Vs. Buddha Jagadheeswararao and others, 2015 (4) RCR (Civil) 765 (SC);**
- 3. Shishpal Vs. Vikram, 1999 (1) RCR (Civil) 628 (P&H);**
- 4. Daya and others Vs. Ajit and others, 2010 (7) RCR (Civil) 1716 (P&H).**

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 16 to 18 of its impugned judgment, which deserve to be noticed here, read as under:-

*“Now it to be seen whether defendant no. 11 has been able to prove that he is bonafide purchaser for valuable consideration and his rights are protected under section 53-A of the Transfer and Property Act. Although at the time of filing written statement he alleged himself to be bonafide purchaser for valuable consideration after having ascertained the clear title of Melo Devi but he has failed to step into the witness box to prove such fact. In a case titled **Iswar Bhai C. Patel @ Bachu Bhai Patel vs Harihar Behera and another 1999 (2) Civil Court Cases Page 1.** the Hon'ble Supreme Court of India laid down that if a party does not enter into the witness to make statement in support of his pleadings, an adverse inference would be drawn that what he has stated in the pleadings is not correct. Similar view was expressed by the Hon'ble Punjab and Haryana High Court in a case titled **Kartar vs Gordhan Dass***

and others 2011 (2) Civil Court Cases page 43.

Now adverting to the case in hand, defendant no. 11 has not stepped into the witness box to utter even a single word that before purchasing land in dispute from Melo Devi he in any manner tried to ascertain her title. Although it was claimed that the entries in the revenue record were in her favour but it was the duty of defendant no. 11 to ascertain the channel of acquiring title by his vendor. It is admitted case of the defendants that such title flows in favour of Melo Devi on the basis of mutation order Ex.P5. As per mutation order Ex.P5 there is reference of existence of other legal heirs of Dharmu. In these circumstances it was incumbent upon the defendant no. 11 to make inquiry as to existence of those legal heirs of Dharmu or their successors at the time of sanctioning of such mutation in favour of his vendor but no step was taken by him.

In order to prove that he is bonafide purchaser for valuable consideration, defendant no. 11 has examined DW2 Swaran Dass. However he is not the power of attorney holder of defendant no. 11. He has rather tried to make up a new case, which is beyond the pleadings of defendant no. 11, by deposing that infact the land in dispute was purchased by him in the name of defendant no. 11 from Melo Devi through her attorney Kamal Singh (defendant no. 2). It is clear from mutation order Ex.,P5 that Dharmu had died in the year 1972 and mutation of inheritance was sanctioned only in the name of Melo Devi in the year 1995 i.e. after 23 years of death of the original owner and thus it was the duty of defendant no. 11 to ascertain the reason of delay in sanctioning of such mutation but there is no evidence from the side of defendant no. 11 that any step was taken to know the reason of such undue delay in sanctioning of mutation of inheritance in the name of Melo Devi from which it cannot be said that there was bonafide on the part of defendant no. 11 at the time of purchasing such property from Melo Devi through her attorney. During his cross-examination DW2

Swaran Dass deposed that no amount of sale consideration was paid at the time of execution and registration of the sale deed. Although he deposed that the amount was paid in the house before execution of the sale deed but he admitted that there was no agreement of sale before such sale. He also admitted that there was no receipt of payment of such amount. He further deposed that he was not aware as to if Melo Devi was related to Dharmu or not. He was not aware in which capacity the estate of Dharmu was sanctioned in favour of Melo Devi. He was confronted with mutation order ex.P5 but he was reluctant, even after going through it, to tell the date of its sanctioning. He further deposed that he was not concerned with such order of mutation. He further deposed that he did not try to know about the other relatives of Dharmu. In such state of affairs even when the witness of defendant no.11 has remained unsuccessful to prove that any inquiry was made regarding the clear title of Melo Devi, I am afraid to say that defendant no. 11 is bonafide purchaser for valuable consideration especially when even payment of sale consideration has not been proved from any authentic and believable evidence.

A bare combined reading of the above-said categorical findings recorded by the learned District Judge would show that appellant-defendant No.11 did not step into the witness box in support of his pleaded case. He was claiming himself to be a bonafide purchaser but there was no convincing evidence available on record in support of his stand taken. Mutation order Ex.P5, which was allegedly disclosing the source of ownership of the vendor of the appellant, itself was found to be patently illegal, it being contrary to the natural succession. It seems that Smt. Melo Devi was trying to outsmart with the other co-sharers, with a view to grab

the entire property left behind by her brother Late Shri Dharmu @ Dharam Singh.

Once the vendor of appellant-defendant No.11 herself was not the owner of the suit land sold by her, such a sale would be unsustainable in law and it will not confer any title on defendant No.11-appellant. Even the witnesses of appellant have not supported his case. DW-2 Swaran Dass deposed that no amount of sale consideration was paid at the time of execution and registration of the sale-deed. In such a situation, how defendant No.11-appellant could have been held to be a bonafide purchaser and the learned District Judge rightly held the appellant not to be a bonafide purchaser. In this view of the matter, it is unhesitatingly held that learned District Judge committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment passed by the learned first appellate court. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

2.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No