

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-1462-2015(O&M)

Date of Decision:01.09.2017

Anand Singh and another

.....Appellants

Versus

Smt.Ratni Devi and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.Ashok Aggarwal, Advocate,
for the appellants.**

RAMESHWAR SINGH MALIK, J.(Oral)

Defendant Nos.5 and 6 are in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration and permanent injunction filed by the plaintiffs was decreed by the learned trial court, vide its impugned judgment and decree dated 30.04.2012 and first appeal of defendant Nos.5 and 6 was partly allowed by the learned first appellate court, vide its impugned judgment and decree dated 30.09.2014, modifying the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 and 3 of its impugned judgment, are that plaintiffs were joint owners in possession to the extent of 2/15th share along with defendant Nos.1 to 4 and other co-sharers of the plot No.590 min, 280 min, 255 min, 2/1, 6,7/2 & 8 situated within the abadi of village Nilothei Tehsil

Bahadurgarh, District Jhajjar. The abovesaid plots mentioned in para No.1 of the plaint were allotted to Sh.Suraj Mal, Balbir and Kalva sons of Shish Ram son of Amrit in the partition of the abadi deh of village Nilothe by the civil court in civil suit No.56 titled as Hari Singh and others Vs. Dharma and others vide judgment and decree dated 12.11.1971. Abovesaid Suraj Mal, Balbir and Kalva sons of Shish Ram were the ancestors of the plaintiffs and defendant Nos.1 to 4 and after the death of Kalva alias Kali Ram, the plaintiffs along with other co-sharers of Kalva inherited and succeeded the entire estate of Kalva being the daughter and class I heir of deceased Kalva and since the death of Kalva, plaintiffs were the joint owners in possession of the plots to the extent of 2/15th share. Defendant Nos.1 to 4 sold the plots No. 590 Min, 280 Min, 255 Min, 2/1 Min, 6 Min, 8 Min and 7/2 Min measuring 660 sq. yards in favour of defendant Nos.5 & 6 vide registered sale-deed dated 24.01.2005, but inadvertently the defendants got inserted plot No.126 Min, 110 Min, 170 Min, 56, 590 Min, 280 Min and 255 Min measuring 660 sq. yards in the sale-deed dated 24.01.2005. Defendants again got prepared a Titama sale-deed dated 26.05.2005 for the correction of Khasra No. which was wrongly described in the sale-deed dated 24.01.2005 and the correct Khasra No. mentioned in para No.1 of the plaint were inserted in the rectified sale-deed dated 26.05.2005 executed by defendant Nos.1 to 4 in favour of defendant Nos.5 & 6. It was further submitted that the plot mentioned in para No.1 of the plaint were still joint between the parties to the suit along with other co-sharers and every co-sharer was in possession of the plots in dispute according to their share and none of the co-sharer was in exclusive possession of any part of the plot in dispute. The sale-deeds dated

24.01.2005 and the subsequent sale-deed dated 26.05.2005 executed between the defendants regarding the plots in dispute were illegal, void, nonest and not binding upon the rights of plaintiffs on the ground that the plaintiffs were not parties to the sale-deed dated 24.01.2005 and 26.05.2005, so the sale-deeds were not binding upon the rights of the plaintiffs; there was no partition amongst the co-sharers regarding the plots in dispute and none of the co-sharer was in exclusive possession of any part of the plots in dispute, so defendant Nos.1 to 4 were having no right to alienate the plot in dispute vide sale-deed dated 24.01.2005 and 26.05.2005; defendant Nos.1 to 4 sold the area in excess of their share and defendant Nos.1 to 4 were not entitled to sell more area than that of their share in favour of defendant Nos.5 & 6 vide sale-deed dated 24.01.2005 and 26.05.2005. It was further submitted that defendant Nos.5 & 6 on the basis of sale-deed dated 24.01.2005 and 26.05.2005 asserted their title over the plots in dispute mentioned in para No.1 of the plaint and want to oust the plaintiffs from the joint possession of the plots in dispute and further want to alienate the plots in dispute in favour of some other persons and to achieve their evil design defendant Nos.5 & 6 were negotiating with the property dealers of the locality. This act of the defendants was illegal, void and not warranted under the facts and circumstances of the case. Plaintiffs requested the defendants so many times to declare the sale-deeds as illegal, void and not binding upon the rights of the plaintiffs and not to oust them from the joint possession of the plots in dispute and not to alienate the plots in dispute to anybody else in any manner, but the defendants did not pay any heed to the request of plaintiffs.

Defendants were put to notice. They appeared and filed their

contesting written statement, raising more than one preliminary objections.

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

- “1. Whether the sale-deed dated 24.01.2005 and 26.05.2005 executed by defendant Nos.1 to 4 in favour of defendant Nos.5 & 6 regarding disputed plots are illegal, void, nonest and not binding upon the rights of the plaintiffs as alleged?OPP*
- 2. If issue No.1 stands proved, whether the plaintiffs are entitled to the injunction as prayed for?OPP*
- 3. Whether the plaintiffs have no cause of action to file the present suit?OPD*
- 4. Whether the suit is not maintainable in the present form?OPD*
- 5. Whether the plaintiffs are estopped to file the present suit by their own acts and conduct?OPD*
- 6. Whether the defendants are entitled to the special costs under Section 35-A of CPC?OPD*
- 7. Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have duly proved their pleaded case by leading cogent and convincing evidence. Accordingly, suit for declaration and permanent injunction filed by the plaintiffs was decreed by the learned trial court, vide its impugned judgment and decree dated 30.04.2012. Feeling aggrieved, only defendant Nos.5 and 6 filed their first appeal which came to be partly accepted by the learned first appellate court, vide its impugned judgment and decree dated 30.09.2014. Hence, this regular second appeal,

at the hands of dissatisfied defendant Nos.5 and 6.

Heard learned counsel for the appellants.

The entire case of the appellants was based on their title allegedly drawn by them on the strength of sale-deed dated 24.01.2005, which was supplemented by a supplementary sale-deed dated 26.05.2005. The only question that arises for consideration of this Court is as to whether vendors of the appellants were owners to the extent what was sold to the appellants by way of these sale-deeds. It is a matter of record and has been duly established by the plaintiffs by leading cogent evidence that vendors of the appellants were not owners to the extent, the suit property was sold by them to the appellants. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

It is the settled proposition of law that nobody can pass on any better title than he himself had. Both the learned courts below were well justified in recording their concurrent findings of facts, while making it crystal clear that vendors of the appellants were not the owners of land measuring 660 sq. yards, which was allegedly purchased by defendant Nos.5 and 6-appellants herein vide abovesaid two sale-deeds. Once this material fact has gone undisputed on record at the hands of defendant Nos.5 and 6-appellants by producing any contrary evidence, they were bound to fail. That is what has been held by both the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason

also.

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:-

Crystal Developers Versus Smt.Asha Lata Ghosh(Dead) through LRs, 2005(9) SCC 375;
Shanti Budhiya Vesta Patel and others Versus Nirmala Jayprakash Tiwari and others, 2010(5) SCC 104;
Jasbir Singh Versus Mohan Singh and others, 2010(3) RCR (Civil) 654;
Munjal Showa Ltd. Versus Commissioner of Customs & C.Ex. (Delhi-IV), Faridabad, 2009(246) ELT 18;
Harpal Singh (dead) through LRs Versus Smt.Rajinder Kaur an others, 2016(1) RCR(Civil) 800.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 19 and 20 of its impugned judgment, which deserve to be noticed here, read as under:-

“In view of the above facts and documentary evidence led by both sides, it is clear, Suraj Mal, Balbir and Kalwa got 1/3rd share each in suit plots measuring 3465 sq. yards, thus, share of Kalwa was 1155 sq. yards. Late Kalwa was having three daughters Gulabo, Ramrati & Ratni and two sons Ram Singh and Nafe Singh. Therefore, each LR of Kalwa was entitled to 231 sq. yards each. Defendant No.1 Rajender, defendant No.2 Surender are the sons of Late Ran Singh son of Kali Ram @ Kalwa, and thus, they were entitled to sell only 231 sq. yards jointly i.e. 115.5 sq. yards each. Further, Nafe son of Kali was was having two sons defendant No.3 Parveen and Ashok (since deceased).

Defendant No.3 Parveen was only entitled to transfer 1/2th share of Nafe Singh out of 231 sq. yards i.e. 115.5 sq. yards. After the death of Ashok, his share was inherited by his widow Smt.Mukesh and his son Mohit. Smt.Mukesh has not mentioned that she is selling her share on behalf of herself and also on behalf of her son Mohit. Further, there is no power of attorney by Mohit in favour of his mother Mukesh. Therefore, Smt.Mukesh was only entitled to sell 1/4th share out of the share of Nafe Singh i.e. $231/4 = 57.75$ sq. yards. Even if Mohit son of Late Sh.Ashok, son of Late Nafe Singh and LRs of Ramrati have not challenged the sale-deed/supplementary sale-deed share their shares, even then in absence of any deed pertaining to relinquishment of their respective shares, vendors/defendant Nos.1 to 4 were not entitled to transfer their share in favour of defendant Nos.5 & 6. A vendor cannot give a better title than what he has.

The plea of defendant Nos.5 & 6 that they are bonafide purchasers qua the share of Kalwa inherited by his LRs is also not attracted in the present case, as defendant No.5 Anand is son of Balbir Singh son of Sish Ram; and defendant No.6 Daya is widow of Ram Chander son of Suraj Mal, son of Sish Ram. Pedigree table in this regard is reflected as under:-

Shish Ram

<i>Kali Ram</i>	<i>Suraj Mal</i>	<i>Balbir Singh</i>
	<i>Daya=Ramchander</i>	<i>Anand Balwan</i>
	<i>Def.No.6</i>	<i>Def.No.5</i>

Therefore, being the co-sharer in the suit land, they were well aware about the pedigree of their family and the LRs of Kali Ram @ Kalwa. Therefore, the sale-deed Ex.D-1 & supplementary sale-deed Ex.D-2 are liable to be modified/rectified qua the shares of LRs of Kali Ram @ Kalwa, who not executant/vendors. As per my calculation in the preceding para, the share of defendant Nos.1 to 4 in

the suit land is 115.5, 115.5, 115.5 & 57.75 sq. yards respectively, totalling to 414.25 sq. yards. However, defendant Nos.1 to 4 sold 660 sq. yards i.e. 245.75 excess land to defendant Nos.5 & 6.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, 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 regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 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 present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

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

September 01, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No