

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

**RSA No.2236 of 2015 (O&M)
Date of decision: 05.07.2017**

Babu Khan

.....Appellant

Versus

Ibrahim and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vishal Goel, Advocate,
for the appellant.

Ritu Bahri, J.

Defendant No.3-appellant has filed the present second appeal against the judgment of reversal dated 16.12.2014 passed by the District Judge, Sangrur, whereby appeal filed by Ibrahim and Ilam Din-plaintiffs (respondent Nos.1 and 2 herein) against the judgment and decree dated 30.08.2012 passed by Civil Judge (Junior Division), Malerkotla, has been allowed and suit of the plaintiff-respondent Nos.1 and 2 for declaration with consequential relief of permanent injunction, has been decreed

Brief facts of the case are that plaintiff-respondent Nos.1 and 2 filed a suit for declaration with consequential relief of permanent injunction to the effect that originally, defendant No.1-Mohd. Sharif was owner in possession of land measuring 12 biswas being 12/377th share out of total land measuring 18 bighas 17 biswas and 02 bighas 08 biswas being 48/210th share out of total land measuring 10 bighas 10 biswas, situated within the revenue estate of village Hussainpura. Vide sale deed No.639 dated

measuring 18 bighas 17 biswas and 02 bighas 08 biswas out of total land measuring 10 bighas 10 biswas to the plaintiffs for a sale consideration of ₹1,26,000/-. Possession of the land was delivered to the plaintiffs-respondent Nos. 1 and 2 at the time of execution of the sale deed. It was alleged that in the year 2007, defendant Nos.2 and 3-Mohd. Khalil and Babu Khan started threatening the plaintiffs to dispossess them from the suit land on the pretext that they had purchased the same from defendant No.1 vide sale deed No.2902 dated 29.11.2004. Upon this, the plaintiffs approached the Halqa Patwari and came to know that mutation qua the suit land had not been entered and sanctioned in their favour. On 04.01.2008, Halqa Patwari made a report that only 16 biswas of land remained in the ownership of defendant No.1. It was alleged that defendants, in connivance with each other, got transferred the suit land in the name of defendant Nos.2 and 3, whereas the said land had already been sold to the plaintiffs. Hence the present suit.

Upon notice, defendant No.1 did not appear before the Court, therefore, he was proceeded against exparte. However, defendant Nos.2 and 3 appeared and filed a joint written statement admitting the ownership of defendant No.1 over the suit land. It was denied that defendant No.1 had sold the same to plaintiffs vide sale deed No.639 dated 22.05.2001. It was submitted that that the alleged sale deed dated 22.05.2001 was a forged and fabricated document. It was further stated that defendant No.1 sold land measuring 08 bighas 15 biswas 19 biswanis to defendant Nos. 2 and 3 vide sale deed No.2902 dated 29.11.2004 for sale consideration of ₹5,06,000/- and delivered possession thereof to them. Defendant Nos.2 and 3 claimed themselves to be the *bona fide* purchasers of the suit land for valuable

consideration without notice of any right of the plaintiffs. Mutation of the suit land was also sanctioned in favour of defendant Nos. 2 and 3. All other averments mentioned in the plaint were denied and ultimately, a prayer for dismissal of the suit was made.

Replication to the written statement was filed, wherein all the averments made in the plaint were reiterated and those of the written statement were controverted.

From the pleadings of the parties following issues were framed by the trial Court:-

1. Whether plaintiffs purchased the land measuring 03 bighas from defendant No.1 vide sale deed dated 22.05.2001? OPP
2. Whether plaintiffs are owners in possession of the disputed property? OPP
3. Whether the defendants are threatening to alienate the suit land to dispossess the plaintiffs from it? OPP
4. Whether suit is maintainable in the present form? OPP
5. Whether suit has been properly valued for the purpose of court fee and jurisdiction? OPP
6. Whether plaintiffs are estopped from filing the suit by their own act and conduct? OPD
7. Whether plaintiffs have concealed the true and material facts from the Court? OPD
8. Whether defendant Nos. 2 and 3 are *bona fide* purchasers of the disputed property? OPD
9. Relief.

After going through the evidence led by the parties, trial Court

dismissed the suit. Santokh Singh (PW-1) had deposed that plaintiffs had purchased land measuring 12 biswas out of land measuring 18 bighas 17 biswas and 02 bighas 08 biswas out of total land measuring 10 bighas 01 biswas through sale deed Ex.P1. Sudagar Ali (PW-3) proved the said sale deed as Ex.P1. This fact was also admitted by defendant Nos. 2 and 3. With these observations, issue No.1 was decided in favour of the plaintiffs. While deciding issue Nos.2, 3 and 4, the trial Court considered the depositions of Santokh Singh (PW-1), Ibrahim (PW-2) and Sudagar Ali (PW-3). In his cross-examination, PW-1 admitted that the plaintiffs have purchased the suit land from defendant No.1 and defendant Nos.2 & 3 never dispossessed the plaintiffs from the said land. PW-2 (plaintiff No.1) also admitted that Mohd. Sharif was still owner of the land measuring 3 bighas because mutation had not been sanctioned in their names. Since plaintiff No.1 had admitted that defendant Nos. 2 and 3 were in possession of their share and he was in possession of the suit land as per his share, trial Court held that plaintiffs were not in possession of any specific khasra numbers of the suit land. Accordingly, issue Nos.2, 3 and 4 were decided against the plaintiffs. In order to prove issue No.8, Babu Khan-defendant No.2 himself stepped into the witness box as DW-2 and proved the sale deed as Ex.D1. The trial Court had observed that plaintiff No.1 himself admitted the fact that defendant Nos. 2 & 3 purchased the land from defendant No.1 through sale deed No.2902 dated 29.11.2004. Therefore, they (defendant Nos.2 and 3) were *bona fide* purchasers of the dispute property. With these observations, issue No.8 was decided in favour of defendant Nos. 2 & 3 and against the plaintiffs. Ultimately, suit of the plaintiffs was dismissed by the trial Court vide judgment and decree dated 30.08.2012.

Feeling aggrieved, plaintiff-respondent Nos. 1 and 2 preferred an appeal, whereupon the first appellate Court examined the evidence led by the parties. In order to prove that plaintiffs had purchased land measuring 03 bighas from defendant No.1 vide sale deed dated 22.05.2001, Ex.P1, for sale consideration of ₹1,26,000/-, plaintiffs had examined Ibrahim (plaintiff No.1) as PW-2, besides Santokh Singh, Numberdar (PW-2), who was one of the attesting witnesses of the said sale deed. Sudagar Ali, Registry Clerk (PW-3) deposed that vide sale deed dated 22.05.2001, Ex.P1, plaintiffs had purchased land measuring 03 bighas from defendant No.1 for a sale consideration of ₹1,26,000/-. Even during cross-examination, defendant No.3-Babu Khan (DW-1) had admitted that plaintiffs were owners in possession of the suit land and he never tried to dispossess them from the land, which they had purchased from defendant No.1-Mohd. Sharif. The first appellate Court had observed that defendant No.1 had never challenged the sale deed dated 22.05.2001, Ex.P1. Moreover, no evidence was led by defendant Nos. 2 and 3 to prove that defendant No.1 ever challenged the said sale deed. With these observations, issue No.1 was decided in favour of the plaintiffs. Once, the sale deed dated 22.05.2001, Ex.P1, stood executed, defendant No.1 could not alienate the same again to defendant Nos.2 and 3. The first appellate Court has further observed that since the parties were closely related to each other, it cannot be said that defendant Nos.2 and 3 were not having any knowledge with regard to the sale deed dated 22.05.2001, Ex.P1, executed by defendant No.1 in favour of the plaintiffs. Therefore, they could not be said to be *bona fide* purchases of the suit land without notice. Ultimately, the findings recorded by the trial Court on issue Nos. 2 to 4 and 8 were set aside and suit of the plaintiffs was decreed to the

effect that they were owners in possession of the suit land measuring 03 bighas, as detailed in the head note of the plaint and were entitled to get mutation of said land sanctioned in their favour on the basis of sale deed dated 22.05.2001.

After going through the impugned judgment, this Court is of the view that since execution of the sale deed dated 22.05.2001, Ex.P1, was duly proved on record by plaintiffs-respondent Nos. 1 and 2 by leading cogent and convincing evidence, the first appellate Court has rightly held them to be owners in possession of the suit land. Moreover, learned counsel for the appellants has not been able to show any illegality, much less perversity, in the findings recorded by the first appellate Court while passing the impugned judgment.

No substantial question of law arises for consideration.

Dismissed.

05.07.2017
ajp

(RITU BAHRI)
JUDGE