

RSA No.3447 of 2015 (O&M)

Amit Kumar
2017.01.31 10:12
I attest to the accuracy and
integrity of this document

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

**RSA No.3447 of 2015 (O&M)
Date of Decision: 20.1.2017**

Seth Malhotra

.....Appellant

Vs.

Raj Pal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. C.M.Munjhal, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

CM No. 8358-C-2015

Applicant seeks condonation of delay of 9 days in re-filing the appeal.

After hearing learned counsel for the applicant, instant application is allowed, for the reasons stated therein. Delay of 9 days in filing the present appeal is condoned.

CM stands disposed of.

RSA No. 3447 of 2015

Plaintiff is in second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration was dismissed.

Brief facts of the case, as recorded by learned first appellate court, in para 2 of its judgment, are that plaintiff-Seth Malhotra had instituted a suit

for declaration to the effect that he was owner in possession of land measuring 03 marla 07 sarsai i.e. 2/15 share of land measuring 01 kanal 08 marlas situated in village Khalra, Tehsil Patti, District Amritsar as per jamabandi for the year 1998-99 and mutation no.2998 dated 28.08.1997 on the basis of sale deed dated 22.07.1997 executed by defendant nos. 1 and 2 in favour of Wazir Chand defendant No.6 of 9/20 share out of the suit land was illegal, null and void and entry of jamabandi was wrong, with consequential relief of permanent injunction. Thus, restraining defendants no. 1 to 8 from alienating the suit land more than their share out of the suit land on the ground that originally, land measuring 01 kanal 08 marla was owned by Tirath Ram, Gian Chand and Bhagwan Dass to the extent of 1/3rd share each.

Bhagwan Dass expired and mutation of his inheritance was sanctioned in favour of his four sons namely Ramji Dass, Sain Dass, Tarlok Chand, Ram Parkash and one daughter namely Kaushayala Devi to the extent of 1/15th share each. Tarlok Chand sold 1/15 share in favour of Ram Saroop son of Ramji Dass, through registered sale deed dated 23.11.2001 and mutation No.412 was sanctioned in favour of Ram Saroop. Ram Saroop sold 1/15th share out of land measuring 01 marla 08 sarsai to the plaintiff vide sale deed dated 13.03.2002. Similarly, the plaintiff purchased 1/15th share out of 01 kanal 08 marlas for `55,000/-, vide registered sale deed dated 13.03.2002 from Ram Lubhaya, Ram Saroop (sons, Surinder Rani, Banarso (daughter) of Ramji Dass. In this way, the plaintiff became owner of 2/15 share out of suit land and has constructed two shops, godowns, stairs etc., in the land so purchased and was in possession thereof, as shown in red colour in the site plan. Tirath Ram was in possession of 1/3rd share out of suit land, as shown in red colour in the site plan and sold 1/3 share to Sheikhar Chand and his portions was shown as blue

colour. Raj Pal and Sham Lal sold 9/20 share out of suit land vide sale deed dated 21.7.1997 registered on 27.07.1999 to Wazir Chand son of Harnam Dass. Thus, they sold more than their share which was illegal and mutation No. 2988 dated 28.08.1997 on the basis of aforesaid sale deed was illegal, null and void and without notice to the plaintiffs. Wazir Chand alleged that he further sold some part of the suit land to Mohinder Pal and Paramjit Singh. The alleged sale deed executed by Wazir Chand in favour of Mohinder Pal and Paramjit Singh was illegal, null and void. Sain Dass son of Bhagwan Dass died and after his death, defendant Nos. 1 to 5 were his legal heirs. Similarly, Ram Parkash son of Bhagwan Dass died and after his death, defendant nos. 10 to 18 were his legal representatives. Kaushalaya Rani daughter of Bhagwan Dass died and after her death defendant Nos.19 to 24 were her legal heirs. Ramji Dass son of Bhagwan Dass died and after his death defendant Nos. 25 to 28 were his legal heirs. Similarly, Tirath Ram son of Salig Ram has died and defendant Nos.29 to 32 are his legal heirs. Gian Chand son of Ganda Mal has died and defendants Nos.33 to 56 are his legal heirs.

Having been put to notice, contesting defendants-respondents filed their written statement, raising more than one preliminary objections. After completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether sale deed dated 22.7.1997 and mutation Nos. 2998 dated 28.8.1997 executed by defendants No.1 and 2 in favour of Wazir Chand defendant No.6 is illegal, null and void?OPP
2. Whether the plaintiff is entitled to declaration as prayed for?OPP

3. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP.
4. Whether the plaintiff is not owner in possession of suit property?OPD
5. Whether the plaintiff has not come to the court with clean hands?OPD
6. Whether the suit property is not properly valued for the purposes of court fee and jurisdiction?OPD
7. Whether the suit is bad for non-joinder of necessary parties?OPD
8. Whether defendant No.6 is bonafide purchaser in good faith for consideration after due inquiry?OPD
9. Whether the site plan attached with the plaint is wrong and not correct according to the actual position of the suit property?OPD
10. Whether the suit is within time?OPP.
11. Whether the court has no jurisdiction to try and entertain the present suit?OPD.
12. Relief.

With a view to prove their respective stands taken, both the parties led their oral as well as documentary evidence. Onus was rightly put on the plaintiff qua issues No.1, 2 and 3, which were material issues. However, plaintiff failed to discharge his onus on the abovesaid material issues. During the course of trial, plaintiff failed to bring on record cogent evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to

prove his case. Accordingly, suit of the plaintiff was dismissed vide impugned judgment and decree dated 6.3.2012.

Feeling aggrieved, plaintiff filed his first appeal which also came to be dismissed by learned first appellate court vide impugned judgment and decree dated 20.1.2015. Hence this appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

A combined reading of both the impugned judgments and decrees would show that learned courts below recorded their cogent findings, which have been found based on sound reasons. Case of the appellant would be squarely covered by the rule of Caveat Emptor. It is a matter of record that defendants had purchased the land from one of the co-sharers vide sale deed dated 22.7.1997 and on the basis of the said sale deed, mutation No. 2998 dated 28.8.1997 was also sanctioned in favour of defendant-Wazir Chand. After this sale deed dated 22.7.1997, vendor of the plaintiff-appellant was not left with that much land which he sold to the plaintiff, thus, he was not competent to execute the sale deed in favour of the plaintiff on 23.11.2001 vide EX.P-2.

It is the settled proposition of law that nobody would be competent to pass on a better title than he himself had. Since vendor of the plaintiff-appellant was not competent to sell the land which he sold to the plaintiff-appellant and the plaintiff was negligent in this regard. He purchased the land on his own risk. The natural consequence would be that the later purchaser will have to suffer. Had the plaintiff-appellant been careful enough to verify the entitlement of his vendor at the time of this sale deed dated 23.11.2001 Ex.P2, he would have never purchased the land. In fact, plaintiff purchased the land from a person who was not having clear title qua the land to be sold and was not also competent to execute the sale deed in favour of the plaintiff. That is what

has been held by learned courts below. There could not have been any other conclusion, except the one arrived at by learned trial court as well as learned first appellate court.

The matter was re-appreciated in detail by learned first appellate court before recording its own cogent findings. Relevant observations made by learned first appellate court in para 10 to 14 of its judgment, which deserve to be noticed here, read as under:-

“After hearing the rival contentions of both learned counsel for the appellant as well as learned counsel for the respondents, I have gone through the file with their able assistance. Perusal of the file revealed that originally the total land belongs to Tirath Ram, Gian Chand and Bhagwan Dass. Respondents No. 29 to 32 are the legal heirs of Tirath Ram, respondents No. 33 to 56 are the legal heirs of Gian Chand and respondents No. 9 to 28 are the legal heirs of Bhagwan Dass. The dispute is only with regard to the share of Bhagwan Dass. No doubt, there is no partition, if there is any partition, then it must be recorded in the revenue record. Bhagwan Dass was succeeded by Ramji Dass, whose legal representatives are respondents No. 25 to 28. Sain Dass, whose legal representative are respondents No. 1 to 5. Ram Parkash whose legal representative of respondents No. 10 to 18 and Kaushalaya Devi, whose legal representative of respondents No. 19 to 24.

It has also been proved on the file that there is no dispute regarding the eastern and western side of the suit land. The dispute is only regarding southern and northern side, so as to show as to which particular property was sold. The claim of the appellant/plaintiff that he purchased 1/5th share from respondents no.25 to 28 and Ram Saroop vide sale deed Ex.P6 arid Ex.P4 respectively on 13.3.2002 for the consideration of Rs. 55,000/-, whereas on the other hand

the respondent/ defendant no.6 claimed to have purchased a part of the suit land from respondents no.1 and 2 and further sold a part of land so purchased by him to respondents no.7 and 8 vide sale deed EX.D1 and Ex. D3.

*The description of the property has given in three sale deeds Ex.P2, EX.P4 and Ex.P6, site plan EX.P1 and three sale deeds Ex.D1, D3 and D5, it comes out to be a case, whereby the appellant/plaintiff intends to take undue advantage.. From the evidence of PW1 Parvinderjit Singh, draftsman, it has been established on the file that appellant/ plaintiff is not in possession over the suit land. Moreover, PW6 Surinder Kumar admitted that the appellant/plaintiff is in sound disposing mind and come to the court. But from the entire file, it is no where mentioned as to why the appellant/plaintiff did not appear in the court. As such, the adverse inference can be drawn against him. The Hon'ble Apex Court in case titled as **Adivokka & Ors Vs. Hanamavva Korn Venkatesh "D" by LRs and others, reported in 2007(3) Civil Court Cases-630**, wherein it has been held that non-examination of party to the lis leads to drawing of an adverse inference against that party. The Hon'ble Apex Court further in case titled as **Vidhyadhar Vs. Mankikrao and another, reported in 1999(2) Civil Court Cases -91**, wherein it has been held that party not entering into the witness box to state his own case on oath and not offering himself to be cross-examined by other side. A presumption would arise that the case set up by him is not correct. Further more, PW6 Surinder Kumar admitted that the possession of one shop is by some junk-dealer which also admitted by PW1 Parvinderjit Singh. The evidence of PW10 Surinder Kumar regarding the possession over the suit property by the appellant/plaintiff is not admissible as the appellant/ plaintiff has examined him in rebuttal evidence, whereas this evidence should be led by the appellant/ plaintiff in affirmative. Further more, it has been*

proved on the file that the property in dispute bearing khasra numbers, but the appellant/plaintiff has not brought on record any khasra girdawari showing his specific possession over the portion in dispute. Further , more, it has also been clearly mentioned in the sale deed which is in favour of the appellant/ plaintiff that the land allegedly purchased by him fell in the share of the vendor on. account of some family partition which has not been produced and proved on the file. Further more PW5 Rajinder Kumar, who is power of attorney holder of the appellant/plaintiff admitted that respondents no.1 and 2 were owner and 9 marlas contained in red and green colour and the same was sold by them to respondent no.6.

All these shows that the appellant/plaintiff is not in possession of the suit land as claimed by him and the sale deed executed by respondents no.1 and 2 in favour of respondent no.6 is legal and valid document, as such, respondent no.6 is bonafide purchaser in good faith for consideration and is protected under section 41 of the Transfer of Property Act. The site plan attached with the plaint is not correct and does not decrepit the actual position at the spot. The appellant/plaintiff has not come to the court with clean hands.

Moreover, the appellant/plaintiff has challenged the mutation no. 2998 dated 28.8.1997 which has been got recorded on the basis of the sale deed dated 22.7.1997, but the sale deed has not been challenged. The mutation has been challenged after more than three years, as such suit of the appellant/ plaintiff is barred by limitation.”

During the course of hearing, when learned counsel for the appellant was confronted with the cogent findings and asked as to how any of these findings are suffering from any patent illegality or perversity, he had no answer and rightly so, it being a matter of record. Under the abovesaid

circumstances, the impugned judgments and decrees have not been found suffering from any patent illegality or perversity, which may warrant interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. No substantial question of law, which is sine qua non for entertaining second appeal, has been found involved in the present case and the impugned judgments and decrees deserve to be upheld, for this reason as well. Reference can be made to the judgment of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286.**

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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

20.1.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No