

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 133

SAO No.38 of 2017 (O & M)

Date of Decision: April 07, 2017

Smt. Bohti Devi

..... PETITIONER

VERSUS

Hari Ram

..... RESPONDENT

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

PRESENT: - Mr. Anil Kshetarpal, Senior Advocate, with Mr. Piyush Aggarwal, Advocate, for the appellant.

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Jaspal Singh, J

1. Aggrieved against judgment dated January 27, 2017 passed by the Additional District Judge, Bhiwani, whereby after setting aside judgment & decree dated March 26, 2013, the matter was remitted back to the trial court with a direction the parties and trial court to implead State of Haryana as party to the lis, the appellant – defendant has preferred the instant appeal.

2. Brief facts giving rise to the instant appeal are that respondent – plaintiff filed a suit for declaration, permanent injunction and possession challenging sale deed dated August 29, 2005 executed by him on various grounds including that the same was result of fraud and misrepresentation. It was also alleged by him that sale deed in question was

defendant appeared and resisted the suit by filing written statement specifically pleading that sale deed dated August 29, 2005 executed by the respondent – plaintiff was voluntary and on account of free will. Neither any sort of fraud was committed nor any misrepresentation was made, and further that he was a bonafide purchaser for valuable consideration and without notice of any adverse title. However, vide judgment & decree dated March 26, 2013, the suit preferred by the respondent – plaintiff was decreed despite the fact that a finding was recorded that fraud or misrepresentation could not be established/proved. The suit was decreed solely on the ground that sale deed in question is in violation of the provisions of The Haryana Ceiling on Land Holdings Act, 1972 (for short, ‘Act’).

3. Dis-satisfied with aforesaid judgment & decree dated March 26, 2013, the appellant – defendant preferred an appeal which was decided vide impugned judgment/order dated January 27, 2017, as reflected in Para 1 of this judgment. However, the findings of the trial court to the effect that sale deed was not result of any fraud or misrepresentation were not set aside, which necessitated the filing of instant appeal.

4. While assailing impugned judgment/order dated January 27, 2017 passed by the lower appellate court, it has been submitted by learned counsel for the appellant that the same is absolutely against the evidence available on file and settled canons of law. Misappreciation of evidence and legal proposition has resulted into miscarriage of justice. Moreover, once both the courts below have come to the conclusion that sale deed is not result of any fraud or misrepresentation and it was voluntary and for consideration, the suit of respondent – plaintiff ought to have been dismissed in toto. Moreover, it is the duty of the respondent to implead private party. State of Haryana has nothing to do with the instant lis. It was

a private sale between the parties to the suit and appeal. Once the plaintiff did not chose to implead State of Haryana as party which according to the present appellant is/was not a necessary party, the court could not have impleaded the State of Haryana on behalf of the respondent – plaintiff as a party to the suit or to make the suit maintainable. Still, the first appellate court has made out a new case for the respondent – plaintiff. The only question which requires determination in the instant lis is whether the sale deed was a result of free will and volition of respondent – plaintiff; the appellant – defendant is a bonafide purchaser for valuable consideration; and for disposal of the aforesaid controversy, State of Haryana has nothing to do? Once it is not the case of either of parties that State of Haryana is either proper or necessary party, the court ought not to have remanded the suit by directing suo-moto to implead State of Haryana as a party to the suit. Thus, impugned judgment/order dated January 27, 2017 and remand of the case with direction to parties and trial court to implead State of Haryana as party to the lis, is absolutely erroneous and detrimental to the interest of the present appellant – defendant. The appellant – defendant is facing pains and strains of protracted trial for the last more than four years and remand of the case vide impugned judgment/order is nothing but would amount to de-novo trial which would take sufficient long time for its disposal and the appellant would unnecessarily suffer harassment, not only pecuniary but physical and mental also, by appearing time and again in the court.

5. While concluding arguments, it has been contended by learned counsel for the appellant that the State of Haryana is not a necessary or proper party to the lis, the impugned judgment/order is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of instant

appeal. Consequently, the appeal deserves to be dealt with and disposed of on merits by the lower appellate court.

6. After bestowing due consideration and scrutinizing the impugned judgment/order dated January 27, 2017 passed by the lower appellate court, this Court is of the considered view that submissions made by learned counsel for the appellant do not carry any legal weight to set aside the impugned judgment, which is otherwise, absolutely in consonance with actual facts as well as legal proposition.

7. Undoubtedly, the land, subject matter of sale deed No.987 dated August 29, 2005, was being in possession of Phoola (father of plaintiff) and Rulia [uncle (Tau) of respondent – plaintiff] as tenants (gair marusi) at will. The said land was declared surplus and stood vest in State of Haryana under the Act. It was allotted to Phoola and Rulia, father & Tau of respondent – plaintiff. Accordingly, mutation Nos.2736 and 2737 dated August 16, 2005 were incorporated and sanctioned in their favour. As per State of Haryana Gazette Notification No.16 H.L.A of 1986/145 dated November 25, 1986, the plaintiff was not competent to alienate or sell away the same within five years of its allotment. Meaning thereby, sale deed dated August 29, 2005 being within the aforesaid period of five years from the date of its allotment, is not legally valid and genuine. Though, the courts below have come to the conclusion that sale deed is not a result of fact or misrepresentation or the same is for valuable consideration but the suit has been dismissed on account of the reason that the sale deed in question has been executed in violation of the above referred Notification issued by the State of Haryana. It cannot be termed to be a private sale as has been contended by learned counsel for the appellant. If there is any infringement or violation of the provisions contained in the Notification issued by the

State of Haryana, it is a necessary party and the land could revert back and vest in it. So, the remand of the case with direction to implead State of Haryana as a party to the suit, cannot be termed to be illegal, rather, this Court is of the considered view that State of Haryana in the given situation is proper and necessary party and the matter in controversy involved in the lis cannot be adjudicated upon in an effective and judicious manner, and the trial court has rightly been directed to implead the State of Haryana as a party. There is no illegality or perversity in judgment & decree dated January 27, 2017 so as to meddle with it.

8. In the light of what has been discussed above, finding no merit in the instant appeal, the same is dismissed, whereby impugned judgment/order dated January 27, 2017 is upheld.

9. No order as to costs.

April 07, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No