

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.960 of 1990 (O&M)

Date of decision: 07.02.2018

Subhash Chander and others

..... Appellants

Versus

Jaswant Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amit Jhanji, Advocate
for the appellants.

Mr. Joginder Singh, Advocate
for respondents No.1 to 5.

ANIL KSHETARPAL, J. (ORAL)

Defendants No.7 to 10-appellants are in regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

Plaintiffs had filed a suit for joint possession claiming that they are entitled to 1/5th share of the land measuring 7 marlas and the sale deed executed by defendants No.1 and 2 i.e. sons of Pakhar Singh on 12.04.1979 is null and void. Defendants No.7 to 10 are in turn purchasers from defendants No.5 and 6 vide registered sale deeds dated 26.02.1980 and 05.01.1983 (three in number). The defendants No.7 to 10 have pleaded that they are bona fide purchasers. Learned trial Court after appreciating the evidence available on the file dismissed the suit filed by the plaintiffs on the ground that the defendants No.7 to 10 are proved to be bona fide purchasers and the suit filed by the plaintiffs challenging the sale deeds executed by

defendants No.1 and 2 was barred by time. Learned trial Court noticed that the plaintiffs earlier also filed a suit for permanent injunction on 17.04.1979. Sale in favour of defendants No.5 and 6 was disputed. Although, the suit was only for injunction but defendants No.5 and 6 were party defendants in the previous suit. The plaintiffs withdrew the suit on 04.05.1979 by making a statement in the Court that the plaintiffs do not want to proceed with the case. Learned trial Court has further found that in the Panchayat, there was a settlement and the Panchayat have settled that the plaintiffs would be entitled to 1/5th share of defendants No.1 and 2.

However, learned First Appellate Court has reversed the finding on the ground that since the mutation has been subsequently sanctioned in favour of the plaintiffs qua 1/5th share, therefore, the sale deeds are null and void qua their share.

In the considered opinion of this Court, following substantial questions of law arise for consideration:-

1. Whether defendants No.7 to 10 who are purchasers from defendants No.5 and 6 are bona fide purchasers for valuable consideration.
2. Whether the suit filed by the plaintiffs was barred by limitation.

Question No.1

- (i) *Whether defendants No.7 to 10 who are purchasers from defendants No.5 and 6 are bona fide purchasers for valuable consideration.*

It is undisputed that when the plaintiffs filed the first suit on 17.04.1979, sale in favour of defendants No.5 and 6 by defendants No.1 and 2 had already been executed on 12.04.1979 and defendants No.5 and 6 were impleaded as defendants in the previous suit also. After filing the suit, the

plaintiffs withdrew the suit. Therefore, it was safe for the defendants No.5 and 6 or everyone else to assume that the plaintiffs have abandoned their rights. This being the position, the sale made by defendants No.5 and 6 subsequently in favour of defendants No.7 to 10 on 26.02.1980 and 05.01.1983 were bona fide transactions.

Still further, defendants No.1 and 2 sold the property in favour of defendants No.5 and 6 i.e. on 12.04.1979, the revenue record recorded defendants No.1 and 2 to be owners of the property being legal heirs of Pakhar Singh on the basis of an unregistered Will. It is subsequently after the withdrawal of the previous suit, the mutation proceedings were not contested by the vendors of defendants No.5 and 6 and the copies of the Will was not produced resulting into sanction of the mutation in favour of natural heirs. Obviously, once the defendants No.1 and 2 had sold the property and washed their hands from the property, they were not interested in contesting the mutation proceedings.

In any case, if the plaintiffs have any right, i.e. only against defendants No.1 and 2. The plaintiffs after having withdrawn the previous suit cannot claim that the sale deed executed by defendants No.1 and 2 in favour of defendants No.5 and 6 is not valid qua their share. The plaintiffs and defendants No.1 and 2 are closely related.

Hence, question No.1 is answered in favour of the appellants.

Question No.2

(ii) *Whether the suit filed by the plaintiffs was barred by limitation.*

As per Transfer of Property Act, a registered sale deed is presumed to be in knowledge of everyone. In the present case, the sale deed was executed by defendants No.1 and 2 on 12.04.1979. The plaintiffs also

filed a suit on 17.04.1979 impleading defendants No.5 and 6 to be party defendants. At least on that day, the plaintiffs were in positive knowledge of the sale deed. The present suit was filed by the plaintiffs on 20.07.1984. The suit was filed after a period of more than three years. The suit was thus time barred. Hence, question No.2 is also answered in favour of the appellants.

In view of the discussion made above, the judgment and decree passed by the learned First Appellate Court is set aside and that of the trial Court is restored.

Regular Second appeal is allowed.

07.02.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No