

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

**RSA No.2502 of 1995 (O&M)
Date of decision:26.04.2018**

Pritam Singh

... Appellant

Vs.

Amar Nath (since deceased) through LRs and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashok Jindal, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL J.

Appellant-defendant no.3 is in Regular Second Appeal against the judgment and decree dated 15.9.1995 rendered by the Additional District Judge, whereby, appeal bearing No.25 of 1991 filed against the judgment and decree dated 18.01.1991, has been allowed.

Plaintiff/respondents instituted the suit claiming declaration to the effect that he has purchased land measuring 5 kanals 15 marlas out of total land measuring 82 kanals 17 marlas situated in village Chhanna Gulab Singh Wali from Mohinder Singh for a sum of Rs.10,000/- vide registered sale deed dated 14.05.1985. The land had fallen to the share of the vendor Mohinder Singh, defendant No.1 in a family settlement. Since the date of purchase of the land in dispute, the plaintiffs were in cultivating possession

as its owner. Subsequently, defendant no.2 Naranjan Singh has sold his 4 kanals of land to defendant No.3- Pritam Singh, vide registered sale deed dated 10.06.1986. The plaintiffs had already purchased the land by specific khasra number and khasra no. 18//24/2 had previously been purchased by the plaintiff but this specific khasra number had subsequently been sold by defendant no.2-Naranjan Singh also in favour of defendant no.3-Pritam Singh which was illegal, null and void. On the basis of the aforementioned sale deed, ibid, defendant Pritam Singh was threatening to dispossess the plaintiffs from this specific khasra number 13//24/2 (2-18) necessitating filing of suit claiming declaration and permanent injunction.

Defendant no.1 did not appear to contest the suit, whereas, defendant no.2 appeared in person and absented later on and proceeded against ex parte. Defendant no.3 contested the suit by filing written statement stating therein that he has purchased the land measuring 4 kanals 4 marlas including the land in dispute bearing khasra no.13/24/2(2-18) from defendant no.2 Naranjan Singh for a sum of Rs.8500/- vide registered sale deed dated 10.06.1986. Possession of the plaintiffs was also denied, rather it was stated that defendant no.3 was in cultivating possession of the land. Even family settlement was also denied. The plea of bonafide purchaser was also taken.

Defendant no.1 later on move an application for setting aside the ex parte proceedings. Thereafter, he filed a written statement stating therein that vide sale deed dated 14.05.1985, he had only sold 0 kanals 11

marlas of land out of the khasra no. 13/24/2(3-11) but plaintiffs fraudulently got recorded in respect of 3 kanals 11 marlas. It was further contended that vide sale deed dated 14.05.1985, he has sold only 2 kanals 15 marlas of land and not 5 kanals 15 marlas as alleged by the plaintiff. The plaintiff was in possession of land measuring 2 kanals 5 marlas only.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs exchanged the land in suit vide sale deed dated 14.5.1985? OPP*
- 2. Whether the plaintiffs are in possession of the land in suit? OPP*
- 3. Whether the plaintiffs are entitled for the injunction prayed for? OPP*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 5. Whether defendant no.2 is a bonafide purchaser for consideration and without notice? OPD*
- 6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 7. Relief.”*

The plaintiffs examined Prem Kumar deed writer as PW1, Karam Singh as PW2 and Harbans Lal as PW3 and brought on record the documents as Ex.P1, Ex.P2 and Ex.PX.

On the other hand, defendants examined Pritam Singh defendant as DW1, Major Singh as DW2 and brought on record the documentary evidence as Ex.D1, Ex.D2 to Ex.D5.

The trial Court on the basis of evidence prima facie dismissed the suit on the ground that plaintiffs had not been able to prove possession of the suit land. The appeal preferred before the Lower Appellate Court has been allowed. It is in this aspect of the matter, the present appeal has been filed.

The present appeal was admitted on 22.11.1996 in the presence of Mr. Ashok Jindal, Advocate for the appellant and Mr. Mohinder Singla, Advocate for the respondents. During the pendency of appeal, respondent No.1 had died and his legal representatives were brought on record. Moreover, respondents No.2 to 4 are also stated to have died. However, no steps have been taken to bring on record their legal representatives. There is no representation on behalf of the respondents. Accordingly, I proceed further to decide the appeal being old matter.

Mr. Ashok Jindal, learned counsel appearing on behalf of the appellant/defendant No.3 submitted that judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law, for, the plaintiffs did not challenge the sale deed dated 10.06.1986 executed by Naranjan Singh, in favour of defendant no.3/appellant, nor had been able to prove their possession. Mohinder Singh had categorically stated in the written statement that he had sold only 0 kanal 11 marlas of land being khasra

no.13//24/2, vide sale deed dated 14.05.1985 and not 5 kanals 15 marlas, for, the sale deed dated 14.05.1985, not only contained the aforementioned khasra number but various other khasra numbers as the dispute revolved only with regard to khasra number 13//24/2. Even sale deed dated 10.06.1986 also pertained to other khasra numbers including khasra number in dispute. The appellant was a bonafide purchaser for valuable consideration as he had purchased the land from Naranjan Singh, brother of Mohinder Singh. The finding of the Lower Appellate Court that status of the appellant had become co-sharer neither here nor there and not sustainable in the eyes of law. The sale deed of appellant was pertaining to 2 kanals 18 marlas of land. The plaintiffs have miserably failed to prove the possession of the property. The finding of the trial Court cannot be tinkered with until there is glaring illegality and perversity which had not been adverted to by the Lower Appellate Court being the last Court of facts and law. Even khasra girdawari also showed the possession of one Jaswant Singh as gair marusi and urged this court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant-defendant no.3, appraised the judgments and decrees as well as record of both the Courts below, particularly the sale deeds dated 14.05.1985 and 10.06.1986 and of the view that there is no force and merit in the submissions of Mr. Jindal.

The sale deed dated 14.05.1985 (Ex.P1) pertained to land measuring 5 kanals 15 marlas bearing khasra number 13//24/2 (3-11), 17/2

min (1-2) 18/2(1-2), whereas, sale deed dated 10.06.1986 pertained to land measuring 4 kanals 4 marlas bearing rect. No.17//5/1(1-2), 13//25/12(0-4), 24/2(2-18). The stand of Mohinder Singh taken in the written statement that he had sold only 11 marlas of land is neither here nor there, nor any evidence has been led on record what was the holdings of Mohinder Singh and Naranjan Singh in respect of khasra no.13//24/2. The sale deed of 10.05.1985, was in respect of disputed land measuring 3 kanals 11 marlas, therefore, it cannot be believed that appellant-defendant no.3 had become owner of land measuring 2 kanals 18 marlas, whereas, Mohinder Singh had sold only 11 marlas of land. The entire thrust of the trial Court had been on the possession without noticing the contents of the sale deed which exercise had been done by the Lower Appellate Court being the last Court of fact and law. Thus, defendant no.3 cannot be termed as a bonafide purchaser for a valuable consideration as per the provisions of Section 41 of the Transfer of Property Act. Khasra girdawari do not prima facie establish a preferential evidence to rebut the evidence led by the plaintiffs. A registered document carries a presumption of truth. Sale deed of defendant No.3 is subsequent one, i.e., after almost one year to that of plaintiffs. In my view, the plaintiffs without any doubt had become co-sharers and therefore put in joint holdings as held by the Lower Appellate Court.

In view of what has been observed above, I do not find any illegality and perversity in the findings of the Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much

less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 26, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No