

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

502

RSA No.2697 of 1996 (O&M)

Date of decision: 07.03.2018

Wazir Singh

..... Appellant

Versus

Avtar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Harpreet Kaur Dhillon, Advocate for the appellant.

Mr. V.K. Mahajan, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in regular second appeal against the dismissal of the suit in part i.e. relief of possession with respect to land measuring 64 kanals and 2 marlas has been declined by the Courts below.

Plaintiff-appellant had filed a suit for declaration and possession claiming that impugned judgment and decree dated 15.03.1980 secured by defendant No.1 against the plaintiff is null, void and result of fraud. He further asserted that the sale deeds executed by defendant No.1 in favour of defendants No.3 to 12 are also consequently null and void. Both the Courts after appreciation of evidence have recorded a concurrent findings of fact, which has not been challenged before this Court, that the civil decree dated 15.03.1980 was result of impersonation, hence, null and void not binding on the plaintiff.

However, both the Courts have declined the relief of declaration and possession on the ground that the defendants No.3 to 12 are

bona fide purchasers. In the considered opinion of this Court, the question which arises for consideration is:-

“whether a purchaser of the property from a vendor who has no right, title or interest in the property, can claim to be bona fide purchasers as per Section 41 of the Transfer of Property Act.”

As noticed earlier, the declaratory decree through which defendant No.1 was claiming ownership has already been held to be illegal, null and void ab initio being result of impersonation. Such findings of fact have not been challenged before this Court. It is further not in dispute that defendants No.3 to 12 are residents of the same village where the plaintiff as also Avtar Singh, defendant No.1 resides. In the considered opinion of this Court, defendants No.3 to 12 have not complied with the requirements of Section 41 of the Transfer of Property Act. Section 41 provides that a person who is ostensible owner transfers the property for valuable consideration with the consent, express or implied, of the person interested in the immovable property. In the present case, no express or implied consent of Wazir Singh, the appellant-plaintiff who was the owner of the property has been pleaded.

The plea of bona fide purchaser is based upon Section 41 of the Transfer of Property Act, 1882. Section 41 of the Transfer of Property Act is extracted as under:-

“Transfer by ostensible owner – Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it:

Provided that the transferee, after taking reasonable care to

ascertain that the transferor had power to make the transfer, has acted in good faith.”

In the considered opinion of this Court, before a plea on the basis of bona fide purchaser is allowed, the party pleading has to prove :-

1. The transferor was/is the ostensible owner.
2. Ostensible owner is the owner by the consent, express or implied, of the real owner.
3. The transfer is for consideration.
4. Transferee has acted in good faith and taken reasonable care to ascertain that the transferor has the power to transfer.

In the present case, defendants No.3 to 12 have not pleaded that the transfer in favour of ostensible owner was with the consent of the plaintiff-appellant express or implied. In absence of such pleadings and evidence, ingredients of Section 41 of the Transfer of Property Act does not stand fulfilled.

Hon'ble Supreme Court while interpreting Section 41 in the judgment reported as Hardev Singh Vs. Gurmail Singh (Dead) by LRs. (2007) 2, SCC, 404 has traced the history of Section 41 of the Transfer of Property Act and has held that Section 41 is based on the law of estoppel to the effect that if the original owner has represented that the transferor is entitled to transfer the property and he would not offer any opposition thereto, then subsequently, he cannot question the legality of act done by the transferor. Para 9 of the aforesaid judgment is extracted as under:-

“Application of Section 41 of the Act is based on the law of estoppel to the effect that if a man has represented that the transferor consents to an act which has been done and that he

would not offer any opposition thereto, although the same could not have been lawfully done without his consent and he thereby induces others to do that from which they might have abstained, he could not question the legality of the act he had so sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.”

In view of aforesaid, this Court finds that the judgments passed by the Courts below cannot be sustained.

Examining the case from another angle i.e., it is well settled that “no one can transfer better title than what he himself has”. In the present case, Avtar Singh had no right, title or interest in the property. Hence, he was not in a position to transfer any title in the property to his vendors.

It will be noticed that relief against defendant No.11 i.e. Sikander Singh has been given up by the counsel for the plaintiff as noticed by the learned First Appellate Court. Learned counsel for the appellant does not dispute this position.

In view thereof, the suit is decreed and judgment and decree passed by both the Courts below are set aside except against Sikander Singh son of Jugraj Singh.

Regular second appeal is allowed.

07.03.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No