

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

RSA No.4379 of 2005

Date of Decision.21.09.2018

Satinder Kumar

...Appellant

Vs

Murti Devi and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Babbar Bhan, Advocate for
Mr. R.S. Chahar, Advocate
for the appellant.

Mr. Vivek Singla, Advocate
for respondent No.1.

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AMIT RAWAL J. (ORAL)

The appellant-defendant No.4 is in regular second appeal against the concurrent finding of fact whereby suit of respondent No.1-plaintiff claiming declaration by laying challenge to the sale deeds dated 04.07.1986, 11.04.1989 and 06.03.1995, has been decreed by both the Courts below.

The aforementioned suit was filed on the premise that plaintiff had purchased a plot of 4 marlas comprised in Rect. No.27, Killa No.8 min situated in revenue estate of village Gobindpura, Tehsil and District Jind vide sale deed dated 15.04.1985 from Gurbachan Singh son of Mangal Singh. It was averred that husband of the plaintiff was working as Mechanic and her brother-in-law, Hawa Singh, who was cousin of her husband had taken original sale deed from her on the pretext of getting the mutation sanctioned but utterly surprised to know that he had sold the land vide aforementioned sale deeds. Even one sale deed was made during the

pendency of the suit.

The aforementioned suit was contested by all the defendants except defendant No.3, who was proceeded ex parte.

Defendant No.1 filed separate written statement and denied the ownership and possession of the plaintiff. It was averred that he had become owner of the land by virtue of sale deed dated 04.07.1986. It was further stated that Hawa Singh told him that the plot was in the name of his wife.

Defendant No.2 filed separate written statement and had taken the same stand as taken by defendant No.1.

Defendant No.4 stated that he had purchased the plot vide sale deed dated 06.03.1995 from defendant No.2 Sher Singh, who purchased the same from defendant No.1 Jagat Singh vide sale deed dated 11.04.1989.

Since the parties were at variance the trial Court framed as many as 17 issues including the issue of relief.

The plaintiff examined as many as six witnesses and brought on record following documents:-

Ex.P/1	Certified copy of sale deed dated 4.7.1986
Ex.P/2	Certified copy of sale deed dated 15.4.1985.
Ex.P/3	Special Power of Attorney executed by the plaintiff in favour of Ram Karan.
Ex.P4	Certified copy of sale deed dated 11.4.1989.
Ex.P5	Certified copy of sale deed dated 6.3.1995.
Ex.PW4/1	Specimen signature sheet.
Ex.PW4/2	Report of hand writing expert.
Ex.PW4/3	Enlarge photographs taken by hand writing expert.
Ex.PW4/7 to PW4/10	Negatives of the photographs.
Mark A	Photocopy of affidavit of Jaswant Singh.
Mark B	Photocopy of calendar in DD No.26 dated 15.4.1995.
Mark C	Photocopy of DDR

Defendants examined as many as six witnesses and brought on record document Ex.D1 Site Plan and Mark-DA, certificate of the date of birth of Sitender.

On the preponderance of evidence, the trial Court decreed the suit and set aside all the sale deeds. In appeal, only defendant No.4 challenged the aforementioned judgment and decree but the same was also dismissed.

Mr. Babbar Bhan for Mr. R.S. Chahar, learned counsel appearing on behalf of the appellant submitted that judgment and decree of both the Courts below suffer from illegality and perversity, as the plaintiff miserably failed to lead evidence with regard to ingredients of Order 6 Rule 4 CPC. The appellant was a bona fide purchaser for valuable consideration. He made all possible enquiries with regard to ownership of defendant No.2 Sher Singh, therefore, no fault can be found. Hawa Singh was not impleaded as party. The suit was barred by limitation as date of first sale deed was 04.07.1986 whereas the suit was filed on 28.01.1995.

On the other hand hand, Mr. Vivek Singla, learned counsel appearing on behalf of respondent No.1 supported the judgments and decrees of the Courts below on the premise that appellant-defendant No.4 miserably failed to prove that vendor had a valid title, for, once Hawa Singh was not having valid title of the property, he could not pass the same to defendant No.1, Jagat Singh and so on and so forth. The concurrent finding of fact and law cannot be tinkered with unless and until there is gross illegality and perversity. There is no limitation for claiming right in the property.

Fraud vitiates everything. It was clear case of fraud committed by Hawa Singh upon the plaintiff, thus, urges this Court for dismissal of the appeal.

This Court vide order dated 26.02.2008 framed the substantial questions of law and the same reads as under:-

“After hearing the learned counsel for the parties, this Court is satisfied that the following substantial questions of law would arise for consideration:-

1) Whether appellant is a bona fide purchaser of the said plot?

2) Whether the appellant purchased the said plot from Sher Singh vide sale deed No.2984 dated 6.3.1995 and is in possession of the said land?

3) Whether after purchasing the said plot, the appellant has spent huge money in construction of the house and is living there in for the last more than 10 years?

4) Whether the sale deed of 1986 and 1989 could be challenged in the year 1985, the suit being barred by limitation?

Admitted.

Status quo be maintained with regard to existing state of affairs of the suit property.

To be heard within two years.”

I have heard learned counsel for the parties, appraised the paper book. On perusal of the records as well as judgments and

decrees, much less, arguments of respective counsel, in my view, the aforementioned questions of law do not arise for consideration, for, Hawa Singh did not have any right and title in the property, which he could pass to defendant No.1 vide sale deed dated 4.7.1986 and further to defendant No.2 by defendant No.1 vide sale deed dated 11.04.1989 and during the pendency of suit to defendant No.4 vide sale deed dated 06.03.1995. It is settled law that a person, who does not have valid title, cannot pass on a better title. The aforementioned observations of mine are derived from the ratio decidendi culled out from the judgment of Hon'ble Supreme rendered in **M/s Eureka Builders and others Vs. Gulab Chand 2018 SCC Online SC 489.**

Even defendant No.4 has not been able to prove the ingredient of Section 41 of the Transfer of Property Act. At the best, he had right to claim damages against the vendor, who had no valid title as the title was derived from defendant No.1, who could not have acquired the same as the original seller/transferor i.e. Hawa Singh had no title.

It is settled law that a person, who purchases the land has to make reasonable enquiry. An enquiry to see that the person who is selling the property has valid title. The property was sold to three persons vide three sale deeds, one of which was during the pendency of the suit. I do not subscribe to the argument of Mr. Babbar Khan that the suit was barred by limitation. Fraud vitiates everything and there is no limitation for claiming title. This view of mine is derived from the ratio decidendi culled out from the judgment rendered by Full Bench of this Court in **Mohinder Singh Vs. Kashmira Singh**

1985 PLJ 82.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below. The substantial questions of law are decided against the appellant-defendant No.4 and in favour of respondent No.1-plaintiff. No ground for interference is made out.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 21, 2018
Pankaj*

Whether Speaking/Reasoned	Yes
Whether Reportable	No