IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.210 of 2007 (O&M) and
other connected appeals.
Date of Order: 29.05.2018

Sukhdeep Singh and others

..Appellants

Versus

Jagir Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S.Bhalla, Advocate, and
Mr. Gurinder Bhandari, Advocate,
for the appellants.

Mr. G.C.Dhuriwala, Advocate, and
Mr. Ishwar C. Garg, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

This appeal shall dispose of Regular Second Appeal Nos.210, 211, 353, 354, 716 and 717 of 2007 as common issue needs determination. Counsel for the parties are also agreed that these 6 appeals can be disposed of by a common judgment.

Plaintiffs-appellants are in the regular second appeals against the concurrent findings of fact arrived at by the courts below.

Plaintiffs claim that they have purchased the property from Smt. Maya Devi through her attorney Vijay Kumar. Maya Devi is alleged to have further purchased the property from defendant nos.1 to 6 through General Power of Attorney, dated 29.06.1993.

Plaintiffs filed a suit for declaration that they are owners in possession, whereas the defendants filed counter claim claiming possession

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of the property. Defendants no.1 to 6 claim that they are owners of the property and they did not execute any general power of attorney or authorized Harphool Singh to execute the sale deeds in favour of Maya Devi.

Both the courts after examining the evidence available on the file have dismissed the suit filed by the plaintiffs and allowed the counter claim filed by the defendants. The courts have found that Harphool Singh, the alleged attorney of defendant nos.1 to 6 has not been examined and the original power of attorney allegedly executed by defendant nos.1 to 6 in favour of Harphool Singh has not been produced.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellants in RSA No.210 of 2007 has submitted that the plaintiffs-appellants were bonafide purchasers of the property and they had purchased the property after verifying the title of Maya Devi who was registered owner as per sale deed dated 08.09.1993. Hence, they submitted that the plaintiff's suit has been wrongly dismissed.

On the other hand, learned counsel for the respondents has submitted that it was necessary for the plaintiffs to prove title of their vendor i.e. Maya Devi. He submitted that in the present case, it has been proved that the alleged attorney in favour of Harphool Singh was never executed by defendant nos.1 to 6. Hence, he submitted that no title passed on to Maya Devi on the basis of a forged power of attorney as set up by Harhool Singh. Hence, he submitted that the plaintiffs cannot claim to be bonafide purchasers. He has further drawn attention of the court to the

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statement of one of the defendant i.e. Mohan Singh, who appeared in the court as DW4 and has stated that all six brothers are residing in different foreign countries and they have brought their passports old and new to prove that on the date the alleged power of attorney i.e. 29.06.1993, none of the brothers visited India. Defendant Mohan Singh also stated that they are well educated and defendant no.4 is a Solicitor, whereas the power of attorney bears his thumb impression. He further denied that he and his brother ever executed power of attorney in favour of Harphool Singh. He further stated that 4 brothers are present in court and ready to depose.

This court has considered the submissions of learned counsel for the parties. However, do not find any substance in the argument of learned counsel for the appellants.

A plea of bonafide purchaser for valuable consideration is based upon Section 41 of the Transfer of Property Act (hereinafter referred to as 'the Act'), which provides that once real owner with consent, express or implied makes the other person to believe that ostensible owner is the owner and other person based upon the aforesaid representation purchases the property for valuable consideration, then the real owner is debarred from resiling therefrom. The requirements of applicability of the above are aptly laid down in the judgment delivered by the Hon'ble Supreme Court of India in the case reported as ***Hardev Singh v. Gurmail Singh (Dead) By Lrs. (2007) 2 SCC 404***.

(i) Vendor should be ostensible owner.

(ii) Sale is for valuable consideration.

(iii) He is so by express or implied consent of actual owner.

(iv) Transferee has taken reasonable case to ascertain the

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ownership of ostensible owner.

In view of the aforesaid, 4 requirements carved out in the aforesaid judgment, must be fulfilled, before any one claim benefit of Section 41 of the Act.

Still further in the present case, power of attorney in favour of Harphool Singh has not been brought on the file. Only a copy thereof was filed. In RSA No.210 of 2007, plaintiff Simpla Rani appeared in the witness box as PW1. She could not tell what was the dimension of the property purchased by her. She could not even tell what were the khasra, khatauni and khewat numbers of the property. She further admitted qua the power of attorney on the basis whereof a sale deed has been executed in favour of the plaintiff, a criminal case has been instituted and trial is pending. She admitted that defendant nos.1 to 6 are residing in foreign country and she did not verify in any manner whether the vendors from defendant nos. 1 to 6 had got any title or not.

In view of the aforesaid statement of the plaintiff, the argument of learned counsel for the appellants does not stands necessary foundation.

In view thereof, there is no good ground to interfere with the concurrent findings of fact arrived at by the court below.

All the six regular second appeals are dismissed.

May 29, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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