IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

107

Date of decision: 15.12.2018

1. RSA No.3498 of 2008 (O&M)

Devinder Kaur **...... Appellant**

Versus

Major Singh and others **...... Respondents**

2. RSA No.2198 of 2009 (O&M)

Darshan Singh and others **...... Appellants**

Versus

Major Singh and others **...... Respondents**

3. RSA No.3186 of 2009 (O&M)

Daljit Singh **...... Appellant**

Versus

Major Singh and others **...... Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. B.S. Bhalla, Advocate
for the appellant(s) (in all cases).

Mr. K.R. Dhawan, Advocate
for the respondents.

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ANIL KSHETARPAL, J. (ORAL)

Vide this judgment, I shall be disposing of three regular second appeals bearing RSA No.3498 of 2008, RSA No.2198 of 2009 and RSA No.3186 of 2009 as all the three appeals are arising from the same suit and a common judgment was passed by the learned First Appellate Court deciding four appeals.

Ganda Singh and Chanan Singh were joint owners of certain land. Chanan Singh sold through two registered sale deeds the land measuring 93 kanals 7 marlas being his half share out of the land measuring 186 kanals 14 marlas in one khewat and the land measuring 9 kanals 10 marlas out of another khewat. Chanan Singh was issueless. His nephew Banta Singh son of Ganda Singh challenge the aforesaid two sale deeds executed. In both the suits, Ganda Singh failed and the sale deeds were upheld, however, due to error by the revenue authorities, the factum of the sale deeds were not reflected in the revenue record. Taking benefit thereof, heirs of Banta Singh sold the property to various persons who are remaining defendants in the suit. The plaintiffs who were purchasers pursuant to the sale deed dated 02.08.1965 filed the present suit for declaration that they are owners of various shares in the property in dispute. They also sought the consequential relief of symbolic possession.

The defendants contested the suit and pleaded that they are bona fide purchasers. The sale deed dated 02.08.1965 was also contested.

Both the Courts on appreciation of evidence have found that the grievance of the plaintiffs is genuine and hence, the plaintiffs are required to be declared co-owners of the property in dispute.

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 has made the following submissions:-

1. That suit filed by the plaintiffs is only for declaration and symbolic possession and since as per the report of the Local Commissioner, tubewell connections etc. were found in the names of the defendants-appellants, therefore, the suit was not maintainable in view of Proviso to Section 34 of the Specific Relief Act.
2. That Gurbir Singh and Shavinder Kaur have not been impleaded as party to the suit, although, they were vendors of the appellant in RSA No.3498 of 2008.
3. That the suit filed by the plaintiffs was barred by time.

As regards first argument, it will be noticed that learned First Appellate Court has dealt with the aforesaid issue in detail and has found that since the plaintiffs on purchase of land vide sale deeds dated 02.08.1965 had become co-sharers, therefore, the suit for actual possession was not maintainable as the plaintiffs can only seek possession of the property which falls to their share by way of partition which is maintainable before the revenue authorities. In such circumstances, Proviso to Section 34 of the Specific Relief Act would have no application because the plaintiffs could not have filed a suit for possession of specified area being only co-sharers. Hence, reference to report of the Local Commissioner would not advance the case of the appellants.

As regards second argument of learned counsel in RSA No.3498 of 2008 that her vendors have not been impleaded as party, it may be noticed that before the First Appellate Court, this objection was never taken. Still further, it is not in dispute that Gurbir Singh and Shavinder Kaur vendors of sale in favour of Devinder Kaur-appellant in RSA No.3498 of 2008 were left with no right, title or interest in the property, therefore, non-joinder of such persons who are left with no right, title or interest cannot be fatal to the case of the plaintiffs.

Last argument of learned counsel for the appellants is on limitation. It will be noted that the plaintiffs who had become co-sharers had only filed a suit for declaration that they are owners in possession of respective shares in the joint Khata. The limitation for such suit cannot be calculated from the date of sale transaction to which the plaintiffs were not parties. In fact, the plaintiffs were not required to challenge the sale deeds. The sale deeds in favour of some of the defendants does not affect the rights of the plaintiffs. The plaintiffs are not party to the aforesaid sale deeds.

Learned counsel for the appellants submitted that they are bona fide purchasers of the suit property for valuable consideration. On the other hand, learned counsel for the respondents-plaintiffs has pointed out that the sale deed in favour of appellants is during the pendency of the suit and therefore, their sale are hit by rule of lis pendence. It is well settled that no one can transfer better title than what one himself has. In the present case, the defendants i.e. heirs of Banta Singh could sell the property which was owned by them. However, such sale deeds would not adversely affect the rights of the plaintiffs. Still further, the sale by an ostensible owner is protected under Section 41 of the Transfer of Property Act. Before Section 41 of the Transfer of Property Act is applied, there are four requirements which have to be fulfilled. Hon'ble the Supreme Court on this aspect has already dilated and culled out the following four requirements before Section 41 of Transfer of Property Act can be applied. Reference in this regard can be made to the judgment reported as *Hardev Singh Vs. Gurmail*

Singh (dead) by LRs, (2007) 2 SCC 404. The requirements which have been culled out are extracted as under:-

> *"The ingredients of Section 41 of the Transfer of Property Act are:-*
> *1. the transferor is the ostensible owner;*
> *2. he is so by the consent, express or implied, of the real owner;*
> *3. the transfer is for consideration;*
> *4. the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer."*

Keeping in view the aforesaid discussion, there is no ground to interfere.

All the applications in all the appeals shall stand disposed of accordingly.

All the appeals are dismissed.

(ANIL KSHETARPAL)
JUDGE

15.12.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No