

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

**RSA No.3972 of 2011 (O&M)
Date of Order: 28.08.2018**

Om Parkash and another

..Appellants

Versus

Bani Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.K.Kansal, Advocate,
for the appellants.

Mr. Sudhanshu Makkar, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendants-counter-claimants are in the regular second appeal against the judgment passed by the learned first appellate court. It may be noted that the suit filed by the plaintiffs has been dismissed by both the courts below and no appeal has been filed against the aforesaid findings.

Father of the defendants-counter claimants, namely, Inder Singh sold certain property to Sh. Ganesh son of Jamma vide sale deed dated 14.01.1970. Smt. Sunehari, daughter of Sh. Inder Singh filed a suit claiming superior right of pre-emption. The aforesaid suit was decreed. It is claimed by the plaintiffs that the entire pre-emption amount and litigation expenses were spend by the plaintiffs. It is further the case of the plaintiffs that Smt. Sunehari entered into an agreement to sell in the year 1971 and delivered possession of land of killa no.5 in place of killa no.7. It is further pleaded case of the plaintiffs that since the dispute arose, panchayat was held which decided that 13 kanals 11 marlas of land would be given to the

plaintiffs. Pursuant thereto, two sale deeds were executed by the defendants-counter claimants, one for 9 kanals 11 marlas i.e. dated 05.07.2004 and second for 4 kanals of the even date. Plaintiffs claim that they are also entitled to more 4 kanals of land out of khasra no.49//5.

Defendants-counter-claimants pleaded that the sale deeds executed by them are illegal as no sale consideration has been paid. Defendants-counter claimants also filed counter claim pleading that since no amount has been paid therefore, both the sale deeds are without consideration and hence illegal.

Learned trial court dismissed the suit and allowed the counter claim after recording a finding that since the sale deeds were without payment of any consideration, therefore, sale deeds are illegal.

However, learned first appellate court after considering all aspect of the matter, although dismissed the appeal filed by the plaintiffs but also dismissed the counter claim filed by the counter claimants-defendants. The learned first appellate court have noticed that after pre-emption decree passed in favour of Sunehari (the sister of father of the counter claimants), appropriate entry in the revenue record was not made and it is only for that reason, the counter claimants-defendants had executed a sale deeds in place of Sunehari.

Learned first appellate court has also relied upon affidavit Ex.P10 filed in by children of Sunehari, dated 02.07.2004, admitting that possession of the land is already with the plaintiffs.

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

Learned counsel for the appellants submitted that in view of

Section 54 of the Transfer of Property Act, in absence of proof of payment of sale consideration, the sale deed is per se void and therefore, first appellate court has erred in reversing the judgment passed by the trial court.

This court has considered the submission.

Learned counsel for the appellants has clearly overlooked the rights and liabilities of the buyers and sellers as defined in Section 55 of the Act. Section 55(4)(Clause b) clearly provides that if ownership of the property has been transferred, passed on to the buyer, the seller only has a right to recover the amount and that amount shall remain charge over the property. Still further on reading of Section 8 of the Transfer of Property Act, it is apparent that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee with all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Learned counsel for the appellants could not draw attention of the court to any clause in the sale deeds, which are Ex.P8 and Ex.P9, dated 05.07.2004, making a provision that in case consideration as mentioned in the sale deed is not paid, the sale would become inoperative or void. Still further on careful reading of the aforesaid sale deeds, it is specifically mentioned that the entire amount has been paid.

It is further not in dispute that the property was owned by Sunehari after the decree for pre-emption was passed. It is only because of the fact that the entry was not made in the revenue record, plaintiffs continued to be recorded as owner after the death of Inder Singh. Entry in the revenue record is not absolute proof of ownership particularly when there is a decree passed by a competent court of jurisdiction. The

defendants-counter claimants being nephews of Sunehari executed the sale deeds in accordance with the decision of the panchayat. Still further till date children of Sunehari have not challenged the sale deeds.

In view thereof, this court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate court.

The regular second appeal is dismissed.

August 28, 2018
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(ANIL KSHETARPAL)
JUDGE

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