

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.214 of 2012 (O&M)

Date of Decision:27.08.2018

Buta Singh and others

...Appellants

Versus

Santokh Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.G.S.Nagra, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Smt.Chinto @ Jeeto was admittedly original owner of the property. She executed a sale-deed in favour of the plaintiffs on 5.8.1991. Entry was not made in the revenue record incorporating the aforesaid sale-deed, although, husband of Chinto @ Jeeto was an attesting witness of the sale-deed. Chinto @ Jeeto has thereafter sold the property in favour of the defendants-appellants vide sale-deed dated 24.8.1993.

The plaintiffs have filed a suit, claiming that they are owners in possession of the property and the sale-deed executed by Chinto @ Jeeto is illegal.

The defendants-appellants denied the execution of the agreement to sell dated 5.8.1991.

Both the courts, after examining the evidence available on record, have found that once on the execution and registration of sale-deed dated 5.8.1991, the title had passed, Chinto @ Jeeto was not owner of the property in dispute.

Learned counsel for the appellants has submitted that the appellants are bonafide purchasers as the sale-deed was not entered in the revenue record.

This Court has considered the submission, however, find no substance therein.

Title in the immovable property passes on with the execution of the sale-deed. The sale-deed dated 5.8.1991 has been proved on file. Thereafter Chinto @ Jeeto was left with no right, title or interest in the property. Mutation of the sale-deed is only an entry in the revenue record for fiscal purpose and it does not either take away or confer any right in the immovable property. It is also well settled law that no one can pass better title than what he himself has.

In the present case, once it is found that Chinto @ Jeeto was not owner of the property after 5.8.1991, the sale-deed in favour of the defendants-appellants is nullity and does not create any right in their favour.

Learned counsel for the appellants has further submitted that the suit filed by the plaintiffs was barred by time. He has also submitted that the sale-deed was executed on 24.8.1993 in favour of the appellants, whereas the suit was filed on 23.9.2004.

This Court has considered the submissions.

The present suit is not challenging the sale-deed . The challenge to the sale-deed is only to the extent that it does not adversely affect the rights of the plaintiffs. The plaintiffs are not the executant of the sale-deed. There is mark difference between a suit filed for cancellation of the document or a mere declaration. Suit for cancellation of document is filed under Section 31, whereas declaration is filed under Section 34 of the

Specific Relief Act, 1963. In the present case, the plaintiffs were only required to file a suit for declaration that they are owners in possession in view of sale-deed dated 5.8.1991.

In view thereof, there is no ground to interfere. Regular Second Appeal is dismissed.

So far as the application bearing No.528-C-12 for placing on record copy of sale-deed by way of additional evidence is concerned, since the effect of the aforesaid sale-deed dated 24.8.1993 has already been considered by this Court as well as by both the courts below, application is disposed of, in terms of the aforesaid judgment.

27.08.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No