

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

**RSA No.3241 of 2016 (O&M)
Date of Decision.26.11.2018**

Gurnam Singh

Vs

.....Appellant

Mohan Singh and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amandeep Singh Manaise, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-defendant No.2 has not been successful in defending the suit for declaration conferring ownership as per the sale deed dated 07.10.2011 registered on 12.10.2011 and setting aside of the transfer deeds dated 17.01.2005, 21.01.2005 and 25.10.2005 executed by defendant No.1 Mehal Singh in favour of defendant No.2. It was alleged that Mehal Singh, defendant No.1 had entered into agreement to sell dated 16.11.2004 with respect to land measuring 12 kanals agreed to be sold for consideration of ₹2,00,000/- per acre, against the payment of ₹1,81,000/- as earnest money.

On failure of Mehal Singh to execute the sale deed, plaintiff instituted civil suit No.598-1 of 2005 titled as “Mohan Singh Vs. Mehal Singh”. The said suit was decreed as per the judgment and decree dated 17.12.2009, which attained finality after dismissal of the appeal by the lower Appellate Court on 31.01.2011. It is in this context of the matter, the defendant executed the sale deed in favour of the plaintiff but on inspecting the revenue record, it transpired that

defendant No.1 was only shown as owner of land measuring 4 kanals 10 ½ marlas as he had sold remaining land of 41 kanals 1 /2 marlas vide aforementioned sale deeds.

Defendant No.1 Mehal Singh opposed the suit by denying agreement to sell. Defendant No.2, assignee, by virtue of the transfer deed alleged himself to be bona fide purchaser for consideration. It was specifically alleged that transfer deed was duly reflected in the revenue record.

Mr. Manaise, learned counsel appearing on behalf of the appellant submitted that there was specific recital in the revenue record with regard of transfer deeds. Transfer deeds are much prior to the sale deeds in question, though the civil suit was filed in December, 2005, therefore, the doctrine of *lis pendens* would not apply. The suit filed in the year 2011 was barred by law of limitation in respect to challenge to the transfer deeds of 2005.

I am afraid arguments of Mr. Manaise are not sustainable, for, the written statement filed in the suit for specific performance did not disclose the factum of the transfer deed. The pleadings culled out in the judgment and decree reads as under:-

“2. Upon notice the defendant appeared and resisted the suit of the plaintiff inter alia on the preliminary objections that the plaintiff has got no right or cause of action and locus standi to file the present suit against him and that he is estopped by his own act and conduct from filing the present suit. The maintainability of the suit has also been challenged. The defendant has

pleaded that the plaintiff has not come to the court with clean hands and has rather concealed material facts from the court. He has pleaded that the real facts of the case are that he (defendant) is an illiterate and old aged person and the plaintiff is Retired Army Personnel and that the plaintiff approached the defendant and asked the defendant about Old age pension and he showed his interest to get the old age pension upon which the plaintiff on the pretext of getting the old age pension started got signed so many blank papers as well as stamp papers and converted his (defendant) signatures on blank papers into alleged agreement to sell in question. He pleaded that he never entered into illegal agreement and never received any earnest money of Rs.1,81,000/- from the plaintiff and has further pleaded that the agreement is a result of fraud and misrepresentation and fabricated one. On facts, the defendant has admitted himself to be the owner of the suit land but has denied that he ever executed any agreement in favour of plaintiff and further that he ever received any earnest money from the plaintiff in the presence of Scribe and Marginal witnesses. It is also denied by him that he ever signed any such agreement.”

It was clear cut denial on behalf of Mehal Singh, thus, played fraud upon the plaintiff. As the fraud vitiates everything, rigors of limitation would not apply. There was only shortfall of 8

kanals of the land and Mehal Singh was left with ownership of 4 kanals 10 ½ marlas, out of total land of 12 kanals.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 26, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No