

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4425 of 2016 (O&M)

Date of Decision: May 21, 2018

Lakhwinder Kaur

...Appellant

Versus

Jangir Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.B.S.Guliani, Advocate for
Mr.Aminder Singh, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.11554-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 252 days in refiling the appeal is condoned.

CM stands disposed of.

CM No.11553-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed subject to all just exceptions.

RSA No.4425 of 2016

Appellant, defendant No.17 in a suit filed by the respondent-plaintiffs claiming joint possession and permanent injunction in respect of the suit property, is aggrieved of its decretal and reiteration by the Lower Appellate Court.

Respondent-plaintiffs instituted the suit aforementioned on the

premise that Dhan Kaur was having 1/5th share in the land measuring 93 kanals 4 marlas. In the decree dated 14.8.1974, other persons were recorded as co-sharers, but her name was not reflected. Since other co-sharers were also effected with the aforementioned judgment and decree, a civil suit bearing No.221 of 29.9.1980 was filed, which came to be decided on 12.5.1981 and said decree merged in the judgment and decree dated 15.10.1982 rendered in Civil Appeal No.27 of 1982.

The suit was contested by the defendants by denying the averments in the suit and it was stated that the suit was barred by law of limitation, estoppel and law of acquiescence. The share of Dhan Kaur was also denied. Defendant No.17 filed separate written statement and raised all the customary pleas.

Since the parties were at variance, the trial Court framed the following issues:-

- “1) Whether plaintiffs have 1/5 share in the agricultural land measuring 93 kanals 4 marlas fully detailed in the head note of the plaints? OPP*
- 2) Whether the plaintiffs are entitled to joint possession to the extent of 1/5th share in the land described in the head note of the plaint? OPP*
- 3) Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP*
- 4) Whether the suit is within time? OPP*
- 5) Whether the defendants are in continuous possession since 14.08.1974 to the knowledge of Dhan Kaur and if so, its effect? OPD*
- 6) Relief.*

Following issue was framed on 12.09.2006:-

2A- Whether defendants no.17 had purchased the land from defendants no.1 and 2 beyond share of defendant nos.1 and 2,

during the pendency of the suit if so, its effect? OPP

Respondent-plaintiffs, in order to prove their case, examined two witnesses, i.e., PW-1 Karamjit Singh and PW-2 Kuldeep Singh and brought on record documents Ex.P1 to Ex.P16, whereas the defendants examined four witnesses, namely, Jang Singh DW-1, Gurtej Singh DW-2, Gurmit Singh DW-3 and Hardeep Singh DW-4 and tendered into evidence jamabandi Ex.D3.

The trial Court, on the preponderance of evidence, decreed the suit as noticed above and two appeals, one by defendant Nos.1 and 2 and another by appellant-defendant No.17, laid before the Lower Appellate Court, have been dismissed.

The present Regular Second Appeal is at the instance of appellant-defendant No.17 arising out of dismissal of Civil Appeal No.141 of 3.10.2009 by the Lower Appellate court.

Mr.B.S.Guliani, Advocate for Mr.Aminder Singh, learned counsel representing appellant-defendant No.17 submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law, for, the suit was *ex-facie* barred by law of limitation. The appellant is bonafide purchaser for value consideration and purchased the property in 2005 and had made improvement thereon, therefore, the Courts ought to have granted the protection as per the provisions of Section 41 of the Transfer of Property Act, for, the vendor did not disclose the pendency of the suit, which was filed on 4.11.2004. The successor-in-interest of Dhan Kaur lost the right to succeed her share, for, remained silent for all this period and other co-sharers acquired the title in 1974 and then in 1981.

I have heard the learned counsel for the appellant, appraised the

paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, the appellant cannot take the plea of bonafide purchaser as the sale is during the pendency of the suit, therefore, it would be hit by doctrine akin to lis pendens. The tenor and mode of the judgment and decree, *ibid*, revealed that Dhan Kaur had 1/5th share in the land measuring 93 kanals 4 marlas, but her share could not be included in the revenue record resulting into passing of the judgment and decree dated 14.8.1974 and 12.5.1981, which merged in Civil Appeal No.27 of 1982. The appellant was to follow the doctrine of “buyer beware”. In case the vendor had not disclosed about the pendency of suit, has remedy to claim damages but cannot take the plea of bonafide purchaser under Section 41 of the Transfer of Property Act, for, the other defendants have not been able to belie 1/5th share of Dhan Kaur in land measuring 93 kanals 4 marlas. The argument of the learned counsel is not able to bring the case within the parameters of perversity.

For the reasons stated above, there is no illegality or perversity in the findings under challenge. No ground for interference is made out, much less any substantial question of law. Resultantly, the appeal is dismissed.

May 21, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No