

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

**RSA No.3135 of 2015 (O&M)
Date of Decision: 15.05.2018**

Naresh Kumar and others

.....Appellants

Versus

Ghamandi Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sanjeev Kumar Yadav, Advocate for
Mr. Sandeep Kumar Yadav, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the respondent/plaintiff was dismissed by the trial Court vide judgment and decree dated 22.07.2013. But as the appeal preferred against the said decree was allowed on 01.05.2015, and the suit was decreed as prayed for, defendants No.5 and 6 are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff-Ghamandi Lal prayed for a declaration that he was the owner in possession of the suit property, situated in village Kakrala Tehsil and District Mahendergarh, and was, thus, entitled to have the same mutated in his name. Further, the sale deed dated 8.1.1996, executed by late Sadhu Ram in favour of the predecessor-in-interest of defendants No.5 and 6 was invalid and had no binding effect upon the rights of the plaintiff. In brief, the case set out by the plaintiff was that in

a land measuring 70 kanals 16 marlas comprised in khewat No.70, khatoni No.118 to 122, Sadhu Ram, father of defendants No.1 to 3 and husband of defendant No.4 had 283/1416 share. The plaintiff purchased a land measuring 2 kanals 0 marla i.e. 40/1416 share from Sadhu Ram pursuant to a sale deed dated 20.09.1994, and since then plaintiff was the owners in possession thereof. The plaintiff, who happened to be an illiterate person, had handed over the sale deed to the Patwari to mutate the property in his name and to make the necessary entries in the revenue records. However, it was only when defendants No.5 and 6 started interfering in the peaceful possession of the plaintiff, it transpired that his name was not incorporated by the revenue officials in the record of rights. Further, as defendants No.5 and 6 also claimed to have purchased the suit property from Sadhu Ram, and all the defendants in connivance with each others attempted to forcibly dispossess the plaintiff, thus the suit.

In the written statement filed on behalf of defendants No.1, 2 and 4 to 6, the execution of the sale deed dated 20.09.1994, alleged to have been executed by late Sadhu Ram in favour of the plaintiff was denied. Likewise, it was disputed if the plaintiff ever entered into possession of the suit property. On the contrary, late Sadhu Ram had sold a *rakba* measuring 4 Kanals-0Marla in favour of defendants No. 5 and 6, vide sale deed, dated 08.01.1996, and they have been in possession thereof since then. And, the said land was rightly mutated in their favour.

On a consideration of the matter, the trial Court reached a conclusion that the plaintiff failed to prove his case as he himself

admitted in his statement that Ravi Parkash and Yogesh Kumar had purchased the suit property in the year 1996, and the same was mutated in their favour vide mutation No.1506 dated 20.10.1996. Although vide sale deed dated 20.09.1994, the plaintiff purchased a land measuring 2 kanals from Sadhu Ram but thereafter in the year 1996, vide another sale deed (Ex.PW3/A) a land measuring 4 kanals i.e. 80/1416 share was purchased by Ravi Parkash and Yogesh Kumar sons of Nand Lal from Sadhu Ram. Thus, for redressal of his grievance, if any, he ought to have filed the suit immediately. Whereas it was instituted after 10 years of the execution of the sale deed dated 8.1.1996. Further, the plaintiff failed to prove his possession over the suit land, therefore, a mere declaratory suit was not even maintainable. On the contrary, the defendants on examining the revenue record and having ascertained the ownership and possession of Sadhu Ram, purchased the suit property for a valuable consideration, and thus, they were the *bona fide* purchasers. Therefore, the sale deed dated 8.1.1996 as also the mutation No. 1506 dated 26.10.1996, whereby the suit property was mutated in favour of the predecessor-in-interest of defendants No. 5 and 6, was valid.

However, the appellate Court on an analysis of the mater in issue and the evidence on record held that the vendor of both the plaintiff as also defendants No.5 and 6 was the same i.e. Sadhu Ram. Jamabandi for the year 1991-1992 (Ex.P1), showed that Sadhu Ram had 3/1416 share in the total land measuring 70 kanals 14 marlas, comprised in khewat No.70. He had also acquired a land measuring 14 kanals

3-1/3 marla, i.e. the share of his sisters in khewat No.70. Thus, he became owner of 14 kanals 6 ½ marla. Mutation Ex.D1 also showed that out of the said land he alienated an area measuring 18 marla to Hardyal son of Ramjiwan vide sale deed No.960 dated 17.06.1994. Prior thereto, he had also sold a land measuring 8 kanals 14 marla out of khewat No.70 to Ravi Parkash and Yogender Singh sons of Nand Lal, pursuant to a sale deed No. 2080 dated 26.11.1993. Meaning thereby, before the plaintiff purchased the suit property i.e. a land measuring 2 kanals from Sadhu Ram he had already sold an area measuring 9 kanals 12 marlas out of his share. And, post sale of the suit property in favour of the plaintiff, Sadhu Ram was left with only 2 kanals 14-1/3 marla of land. Meaning thereby, he was competent to sell only that much land to Ravi Parkash and Yogender Kumar sons of Nand Lal. However, vide sale deed No.4084 dated 8.1.1996, he actually sold an area measuring 4 kanals i.e. 1 kanal 5-2/3 marla in excess of his share and entitlement. Thus, apparently Sadhu Ram took advantage of non-recording of mutation in favour of the plaintiff as regards the land measuring 2 kanals which he had sold vide sale deed dated 20.09.1994. Undoubtedly, pursuant to a sale deed dated 8.1.1996, a mutation No.1506 (Ex.D4) was entered in favour of the predecessor-in-interest of defendants No.5 and 6, in the year 1996. However, the mutation could never be termed as document of title. And even if the revenue official had failed to mutate the suit property in favour of the plaintiff, pursuant to the sale deed dated 20.09.1994 (Ex.PW3/B) his ownership or title therein was not extinguished. The plea

set out by the defendants that the sale deed dated 20.09.1994, was never executed by late Sadhu Ram, or it was a result of fraud, remained unsubstantiated for lack of any cogent evidence. On the contrary plaintiff examined Jaivir Singh Yadav (PW5), handwriting and fingerprint expert, who upon comparing the thumb impressions/signatures of late Sadhu Ram appearing upon the sale deed dated 20.09.1994, with his thumb impressions/signatures appended upon the sale deed dated 8.1.1996, testified that the disputed signatures/thumb impressions appearing on both the sale deeds were of the same person. Further, the finding recorded by the trial Court that plaintiff had failed to prove himself to be in possession of the suit land was also erroneous. For, in terms of the recital in the sale deed dated Ex.PW3/B, the plaintiff was put in possession of the land measuring 2 kanals; the suit property. No other evidence was brought on record either to show that despite execution of the sale deed dated 20.09.1994, late Sadhu Ram remained in actual physical possession or in cultivating possession of the suit property. Even otherwise, it defies logic that plaintiff, despite having purchased the suit property for a valuable consideration did not choose to obtain possession. In so far as, the plea whether defendants No.5 and 6, were *bona fide* purchaser, suffice it to say, once plaintiff was in possession of the suit land since execution of the sale deed dated 20.9.1994, defendants No. 5 and 6 ought to have ascertained the nature of his possession. Thus, had defendants No.5 and 6 made the necessary inquiries they would have known that plaintiff had already purchased an area measuring 2 kanals

from Sadhu Ram. Therefore, sale deed in favour of defendants No.5 and 6 to the extent of 2 kanal 14-1/3 marlas alone could be held to be valid. But not as regards the remaining area measuring 1 kanal 5-2/3 marlas. Further, the suit filed by the plaintiff could not be said to be barred by time, for a mere adverse entry in the revenue record would not extend any cause of action to the plaintiff to file a suit claiming ownership. Rather, it was only when his title/ownership was threatened and he apprehend forcible dis-possession at the instance of the defendants, he instituted the present suit. Thus, the decree rendered by the trial Court was reversed and the suit was decreed.

Learned counsel for the defendants/appellants merely reiterated the submissions that were advanced and duly dealt with by the first appellate Court. On being pointedly asked, learned counsel for the appellants/defendants could not refer to anything on the record to show if the conclusion arrived at by both the Courts were either contrary to the record or suffered from any material illegality. No other argument was advanced. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly, dismissed.

15.05.2018

Manoj Bhutani/Pkapoor

(ARUN PALLI)
JUDGE

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