

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

RSA No.5166 of 2016 (O&M)

Date of decision : 26.04.2018

Mahinder Kaur and others

...Appellants

Versus

Jatinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurdial Singh Jaswal, Advocate for the appellants.

Mr. Deepak Saini, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The legal heirs of the plaintiff-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court.

The dispute in the present case is with regard to a passage provided to the plaintiff as per the sale deed dated 10.05.1986. Late Sh. Ram Partap who was owner of the property while selling the land measuring 8 kanals to the plaintiff vide sale deed dated 10.05.1986 had provided a passage from his own fields located towards east of land sold. It is the case of the plaintiff that he has been using this passage since the time of his purchase. However, the defendants who are subsequent purchasers are trying to block the same. It is not in dispute that after the death of Ram Partap, the property was inherited by Chuhar Ram who had sold the land to

Smt. Sushma and Gulab Rai who in turn sold the property to defendant No.1-Jatinder Singh vide registered sale deed dated 24.11.2003.

Learned trial Court after appreciating the evidence available on the file has found that since defendant No.1 has also purchased the property from same owner, therefore, defendant No.1 is bound to provide a passage which was provided in the sale deed. However, learned First Appellate Court has chosen to reverse the findings by assigning following reasons:-

1. In the revenue record, there is no passage.
2. The plaintiff has failed to show that he has been using the passage for the last 20 years and, therefore, plaintiff cannot claim easementary rights.
3. In the sale deed produced by the plaintiff, there is a reference to the passage, however, the aforesaid sale deed is not binding on defendant No.1 being a subsequent Vendee.

In the considered opinion of this Court, the question of law which needs determination is as under:-

- a) Whether a subsequent Vendee from the same Vendor is bound by the terms of the sale deed executed in favour of other purchaser prior in point of time?

It is not in dispute that Ram Partap, the original owner and the predecessor-in-interest of defendant No.1 had sold the property to the plaintiff vide sale deed dated 10.05.1986. It is specifically recorded in the sale deed that apart from selling the land measuring 8 kanals, the right of ingress and egress has been provided to the Vendee through the land of the Vendor situated on the eastern side which connects with a public passage. It

is further not in dispute that defendant No.1 is also subsequent purchaser from the successor-in-interest of the same Vendor. It is well established that no one can transfer better title than what he himself has. In the present case, after executing the sale deed in favour of the plaintiff, Ram Partap was left with a right of passage. After the death of Ram Partap, Chuhar Ram inherited the same rights. Same rights were sold to Sushma and Gulab Rai who in turn sold the property to defendant No.1. Such being the undisputed position, defendant No.1 is bound by the terms of the sale deed which was executed by his predecessor-in-interest prior in point of time. Hence, question of law is answered in favour of the plaintiff.

Now let us deal with the reasons given by the First Appellate Court.

First reason given by the Appellate Court is that no passage is provided in the revenue record. It is not the case of the plaintiff that it was a public passage. The plaintiff's case is simplicitor that while selling the land measuring 8 kanals, his Vendor had provided a passage to him from his own land. A owner is entitled to provide a passage to its Vendee from his own land. The plaintiff does not claim any ownership over the land which is under the passage. He only claims the right of user which was conceded by the owner at the time of the execution of the sale deed. Hence, the first reason assigned by the First Appellate Court was totally erroneous.

Second reason assigned by the First Appellate Court is that 20 years have not been completed and, therefore, easementary rights have not matured. It is strange that the learned trial Court as well as First Appellate Court framed a issue of easementary right. The suit was simplicitor for

declaration that the plaintiff is entitled to use the passage. While framing the issues, the Court should be conscious of the fact that what is the dispute involved in the case.

Next reason assigned by the Court is that the subsequent Vendee is not bound by the terms of the sale deed executed by the common Vendor in favour of the previous Vendee. Once the Vendor had given a right of passage prior in point of time to the plaintiff, the subsequent Vendee who has purchased from the same Vendor would remain bound by the terms of the sale deed. At the cost of repetition, it is well settled that no one can transfer better title than what he has.

Next reason assigned by the First Appellate Court is that in the sale deed, the right of passage has been added with pen whereas remaining sale deed has been typed. This Court has seen the copy of the sale deed. No doubt, the right of passage has been added with pen but it is duly thumb marked by the Vendor i.e. Ram Partap. The correctness of the aforesaid sale deed is not in dispute. The defendants have not led any evidence to prove that the line was subsequently added or was not added with the consent of the vendor. No effort was made by the defendants to establish that the sale deed has been interpolated.

Learned counsel for the respondents has submitted that in the sale deed dated 10.05.1986, khasra number through which passage has been provided has not been given. Hence, he submits that the provision of passage is vague.

A careful reading of the sale deed establishes that the passage was provided from the eastern side.

Learned counsel for the appellants has produced a copy of Aks Sijra/lay out plan of the area. There is a public passage which is coming from eastern side upto land situated in khasra No.6/2 whereas the land sold to the plaintiff-appellant is comprised in khasra No.7/2 and 8/2/1. Public passage which was coming upto a small distance has just been connected with a small piece of land from khasra No.6/2.

Learned counsel for the appellants has cited the judgment passed by this Court reported as *2012 (5) RCR (Civil) 87 titled as Lachhman Dass Vs. Baljeet and others*, to contend that the subsequent Vendee shall not be bound by the sale deed, which was executed by his Vendor.

This Court has carefully read the judgment. The aforesaid judgment is on a particular facts and situation. This Court in the aforesaid judgment as ratio decidendi has not laid down that the subsequent Vendee would not be bound by the terms of the previous sale deed.

For the reasons recorded above, judgment under challenge is set aside. Regular Second Appeal is allowed. The judgment passed by the trial Court shall stands restored.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

26.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No