

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4017 of 2015(O&M)

Date of Decision:23.8.2018

Anurag Jain

---Appellant

vs.

Makhtool and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rohit Khanna, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by Makhtool and others-respondents No. 1 to 5 for declaration and permanent injunction was decreed by the trial court vide judgment and decree dated 16.4.2012 and appeal preferred by unsuccessful defendant No. 6 -appellant was dismissed by the Additional District Judge, Palwal vide judgment and decree dated 30.9.2014.

The facts relevant for disposal of the appeal are that as per the case set up by the plaintiffs-respondents, Makhtool-plaintiff No. 1 and his brothers Babu Singh, Ram Chander and Ram Narain were owners in possession in equal shares i.e. 1/4th share each in land measuring 43 kanal 6 marlas, situated in the revenue estate of village Hurithal, Tehsil Hathin,

District Mewat (Nuh) as per jamabandi for the year 1984-85, detailed in para 1 (unnumbered) of judgment of the trial court. Ram Chander, one of the brothers expired issueless on 24.12.1987 and his share was inherited by his three brothers namely Makhtool, Babu Singh and Ram Narain and two sisters namely Smt. Ramwati and Smt. Shanti Devi in equal shares i.e. $1/20^{\text{th}}$ share each. Mutation No. 845 of inheritance was entered and sanctioned on 12.4.1990. In this manner, Ramwati and Shanti Devi became owners in possession of $1/20^{\text{th}}$ share each in the suit property. Inadvertently, the revenue officials changed revenue entry showing Makhtool, Ram Chander, Babu Singh, Ramwati and Shanti Devi owners in possession of $1/5^{\text{th}}$ share each in suit property in the jamabandi for the year 1989-90. On the basis of wrong revenue entries, Smt. Ramwati sold $1/5^{\text{th}}$ share in the suit property to Smt. Nirmala Devi, defendant No. 5 as per sale deed No. 3182 dated 29.11.2007 and mutation No. 1282 dated 18.12.2007 was entered and sanctioned. Nirmala Devi further sold $1/5^{\text{th}}$ share in the suit property to Anurag Jain, defendant No. 6 (appellant herein) vide sale deed No. 3550 dated 28.12.2007 on the basis whereof, mutation No. 1286 dated 17.1.2008 was entered and sanctioned. It is averred that as Smt. Ramwati was owner of $1/20^{\text{th}}$ share in the suit property, she could not alienate $1/5^{\text{th}}$ share to Nirmala Devi.

The appellant-defendant No. 6 filed the written statement and raised preliminary objections inter alia non-maintainability of the suit, locus standi; cause of action; estoppel and; concealment of material facts. He purchased $1/5^{\text{th}}$ share in the suit property vide sale deed dated 28.12.2007 and mutation No. 1286 was sanctioned in his favour. No

objection was raised at the time the sale deed was executed. The plaintiffs are estopped by their own act and conduct from questioning title of the answering defendant. He will suffer irreparable loss if he is restrained from enjoying the suit property. He is bona fide purchaser for valuable consideration. Previously the vendor of answering defendant was lawful owner in possession of suit land.

The trial court framed issues, reproduced in para 9 of the judgment. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court decreed the suit to the effect that sale deed dated 29.11.2007 executed by Smt. Ramwati-defendant No. 1 in favour of Nirmala Devi-defendant No. 5 and subsequent sale deed dated 28.12.2007 executed in favour of Anurag Jain are illegal, null and void except to the extent of 1/20th share belonging to Ramwati. Further held that since Smt. Shanti Devi inherited only 1/20th share in the suit property on death of Ram Chander, mutation No. 1290 of inheritance entered in favour of her children regarding 1/5th share is not binding upon rights of the plaintiffs and the revenue entries are liable to be rectified to that extent. The defendants were restrained from alienating more than their share in the suit property.

The sole submission made by counsel for the appellant is that the trial court did not frame an issue with regard to Nirmala Devi and thereafter the appellant to be bona fide purchaser for valuable consideration, therefore, the appellant has been deprived of an opportunity to establish his plea in this regard. It is argued that judgments and decrees passed by the

courts may be set aside and the matter be remitted to the trial court for adjudication afresh after framing a specific issue in regard to bona fide purchaser. He has relied upon judgment of Hon'ble the Supreme Court **Crystal Developers and others vs. Asha Lata Ghosh (Dead) through LR's and others AIR 2004 SC 4980.**

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned.

Counsel for the appellant has not disputed that land measuring 43 kanal 6 marlas was previously owned by Makhtool Singh, Babu Singh, Ram Chander and Ram Narain sons of Chunni to the extent of 1/4th share each. On death of Ram Chander in December 1987, mutation qua his inheritance was sanctioned in favour of his siblings namely Makhtool Singh, Babu Singh, Ram Narain, Smt. Ramwati and Shanti Devi vide mutation No. 845 sanctioned on 12.4.1990. The appellant has not disputed that Shmt. Ramwati became co-owner in the entire land to the extent of 1/20th share on the basis inheritance to her brother Sh. Ram Chander. There was some mistake committed by the revenue authorities and as a consequence, all the five i.e. three brothers and two sisters were recorded to be co-owner to the extent of 1/5th share each. Smt. Ramwati being co-sharer to the extent of 1/20th share could not confer title upon her vendee qua land more than her 1/20th share, therefore, sale deed dated 29.11.2007 executed by Shmt. Ramwati in favour of Shmt. Nirmala Devi beyond her 1/20th share is legally invalid.

The appellant raised the plea that he is a bona fide purchaser for valuable consideration. As the appellant knew fully well the controversy

involved in the suit and he adduced evidence to prove his plea raised in the written statement, he cannot be heard to say that for want of specific issue with regard to his plea of bona fide purchaser, a prejudice has been caused to him and for that reason the judgments and decrees passed by the Courts are liable to be set aside and the matter requires remittance to the trial court for decision afresh after framing a specific issue regarding appellant being a bona fide purchaser.

Counsel has referred to judgment in **Crystal Developers and others' case (supra)** but he has not made any submissions as to how this judgment is relevant in the context of controversy involved in the present appeal. That being so, the appellant cannot derive any advantage from the referred authority.

The Courts have recorded consistent findings negating plea of the appellant to be bona fide purchaser of the land in question. Nirmala Devi, defendant No. 5 caused appearance in the suit but later absented from the proceedings even before filing the written statement. As such, there is no defence plea raised by her much less that she is a bona fide purchaser for consideration and without notice of defect in title of Ms. Ramwati. It is pertinent to note that she purchased suit land from Ramwati on 29.11.2007 and further sold the same to Anurag Jain appellant on 28.12.2007.

Anurag Jain examined Rattan Lal, husband and attorney of his vendor Smt. Nirmala Devi. He tendered into evidence his affidavit Ex. DW2/A. He has deposed that we purchased the land after seeing all the mutations and jamabandis. In his cross examination, he has stated that

when he purchased the land from Smt. Ramwati, he had seen jamabandi for the year 1984-85. Voluntarily stated that in the jamabandi seen by them, share of Ramwati was 1/5th and the same was purchased by him in the name of his wife. He had not seen the mutation vide which Ramwati became owner. He had seen all the mutations. He did not remember if he had seen mutation No. 845 or not.

Perusal of the facts elicited in examination in chief and cross examination of Rattan Lal does not lead to record a finding that Smt. Nirmala Devi can be said to be a bona fide purchaser without notice of defect in title of Smt. Ramwati. Not only this, Anurag Jain tendered into evidence his affidavit Ex. DW1/A by way of examination in chief. His testimony is conspicuously silent as to what enquiries were made by him before purchase of land from Smt. Nirmala Devi. In his cross examination, he had stated that he had seen the mutation in favour of Nirmala Devi and Ramwati and jamabandis before purchasing the land. Ramwati might have become owner in mutation No. 845 but the same is not known to him. Taking a view from testimony of Anurag Jain, it is difficult to accept contention of the appellant that findings of the courts rejecting plea of the appellant of his being a bona fide purchaser for consideration, merits intervention. I would hasten to add that Anurag Jain has only raised the plea that he is a bona fide purchaser for valuable consideration but no such plea has been raised by him that he had no notice of defect in title of Nirmala Devi and Ramwati. In this view of the matter, I do not find any justifiable reason to interfere in consistent findings recorded by the courts whereby it has been held that sale deed in favour of Nirmala Devi and

Anurag Jain executed by Smt. Ramwati and Nirmala Devi respectively are not valid except to the extent of 1/20th share of Ramwati.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay in refiling the appeal is of academic relevance only.

(Rekha Mittal)
Judge

23.8.2018
paramjit

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