

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

RSA No.2411 of 2018 (O&M)

Date of Decision: May 01, 2018

Karan Singh

...Appellant

Versus

Khems Dass and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Sandeep Verma, Advocate for
the appellant.

Mr.J.P.Sharma, Advocate for
respondent No.3 – caveator.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below whereby the suit of the plaintiff-appellant for declaration and permanent injunction has been dismissed.

The case of the plaintiff-appellant was that defendant no.2- Sita Devi was owner in possession of 1/12th share of land comprised in khewat no.67 khatoni no.74 to 83 and 1/4th share in khewat no. 110 khatoni no. 139 as per mutation no.923 dated 9.2.2002. She executed two sale deeds dated 10.09.2003 in favour of plaintiff nos. 1 to 3. Since then the plaintiffs are owners in possession of the suit property. It was pleaded that despite knowledge of the sale deeds in favour of the plaintiffs, defendant no.1 and 2 in conspiracy with each other alienated 22K-1M of land in favour of defendant no.3 vide registered sale deed dated 25.6.2010 which was illegal

and null and void.

The case of defendant no.1 was that defendant no.2 Sita Devi was never owner in possession of the suit property. The property was owned by defendant no.1. Defendant No.2 was his daughter- in- law being the widow of his deceased-son. Claiming defendant no.1 to be dead, she in conspiracy with the plaintiffs, got mutation of inheritance of the land sanctioned in her name. When defendant No. 1 got to know of the same he immediately within twenty days of the sanctioning of the mutation moved an application whereupon the mutation was set aside.

Defendant no.3 in his reply contended that defendant no.1 was exclusive owner in possession of the suit property and he executed sale deed dated 25.6.2010 in favour of defendant no.3 and since then defendant no.3 is owner in possession of the suit property. It was pleaded that possession of defendant no.3 is protected under Section 53-A of the Transfer of Property Act being bona fide purchaser with consideration. Defendant no.3 also filed a counter claim claiming that she was the exclusive owner in possession of the property by virtue of sale deed dated 25.6.2010 and the sale deeds No.1569 and 1570 dated 10.09.2003 in favour of the plaintiffs had no legal sanctity as the mutation no.923 in favour of defendant no.2 had been set aside in appeal.

Learned trial Court noted that it was borne out from the record that defendant no.2 Sita Devi got recorded mutation no. 923 dated 19.2.2002 Ex.P3 in her favour by falsely claiming that her father- in- law Khemsi Dass- defendant No.1 had expired in the year 2001. When Khemsi Dass came to know of this fact he immediately within 20 days of recording of the

mutation no. 923 filed an appeal. The mutation was set aside by the Collector vide order dated 30.8.2004. The appeal of Sita Devi- defendant no.2 was dismissed on 29.5.2007 . Her revision was dismissed by the Financial Commissioner on 4.12.2008. In view thereof the registered sale deeds dated 10.09.2003 in favour of the plaintiff lost all legal sanctity. The learned Trial Court further concluded that the plaintiffs could not be considered as a bona fide purchasers as they did not conduct reasonable and bona fide inquiries nor did they act in good faith. PW-1 Karan Singh and PW-2 Mahesh Kumar had admitted that defendant no.1 was residing with defendant no.2 at Bhiwani. Before that he was resident of village Madhogarh. The plaintiffs did not make proper enquiries to ascertain the title of defendant no.2 nor did they take any step to verify the death of defendant no.1. The plaintiffs belong to the same village as defendants no.1 and 2. Defendants no.1 and 2 frequently visited the village, a fact which was admitted by the witnesses of the defendants. The plaintiffs should have insisted on seeing the death certificate of defendant no.1. It was concluded that defendant No. 2 had committed a fraud by getting the land mutated in her name without express or implied consent of the true owner and could not confer a valid title on the plaintiffs. It was further held that merely because an injunction suit filed by defendant No. 1 against defendant No. 2 had been dismissed it would not constitute res judicata in the subsequent suit relating to title. Accordingly the suit was dismissed and the counter claim of the defendant No. 3 was allowed.

The Ld. Lower Appellate Court affirmed the findings of the Ld.

Findings of fact have been recorded by the Courts below. Defendant No.1 was admittedly the owner of the suit property which was fraudulently got mutated by defendant No.2 his daughter-in-law in her name claiming him to be dead. He immediately within twenty days filed an appeal and got the mutation entries corrected which orders have attained finality. As defendant No. 1 had no valid title to the property, her vendors the plaintiffs could not claim a better title. Moreover their lack of bona fides have been established. Defendant No.3 having purchased the suit land from defendant No.1, the valid and rightful owner, his counter claim has been decreed.

Ld. Counsel could not point out as to how the findings of the Courts below are perverse or not based on the record. No question of law arises for determination in the case.

Accordingly, this appeal is dismissed.

Since the appeal has been dismissed on merits, therefore, there is no necessity of deciding the application for condonation of delay in re-filing the appeal.

May 01, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No