

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

RSA No.5777 of 2014 (O&M)

Date of decision:21.11.2018

Hardeep Singh

... Appellant

Vs.

Hardial Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gurvinder Singh Sindhu, Advocate
for the appellant.

Mr. G.S.Nagra, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

C.M.No.8909-C of 2016

The application is allowed subject to all just exceptions. Legal representatives of appellant-Hardeep Singh as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

Amended Memo of Parties is taken on record.

RSA No.5777 of 2014 (O&M)

The appellant-defendant no.1 is aggrieved of the concurrent findings of facts and law, whereby, the mutation, sale certificate issued in pursuance to the judgment and decree in respect of land measuring 13 kanals 18 marlas out of 20 kanals 10 marlas, have been set aside, with a further restraint order qua alienation of more than 7 kanals 2 marlas out of

khasra no.746 and 747.

This case has a chequered history. Prior to filing of the present suit in 2007, the facts which have been brought on record are that Hardeep Singh had entered into an agreement to sell dated 01.10.1994 in respect of land measuring 24 kanals with Nidhan Singh. The stipulated date for execution and registration of the sale deed was 11.01.1995. Since Nidhan Singh did not come forward for performance of the agreement to sell, appellant-defendant no.1 as plaintiff instituted the suit for specific performance. The trial Court, vide judgment and decree dated 27.01.1999 decreed the suit. However, the Lower Appellate Court, vide judgment and decree dated 19.04.2003 confined it to the alternative relief. The total sale consideration was ₹1,80,000 against the payment of ₹80,000/- as earnest money. The land measuring 20 kanals 10 marlas was attached vide order dated 19.11.2003. The defendants did not come forward to pay the amount and the aforementioned land was purchased by appellant-Hardeep Singh with the permission of the Court, vide sale certificate dated 19.11.2005. The possession was taken on 20.03.2006. Defendant no.2-Jagir Kaur, daughter of Nidhan Singh filed objections but the same were dismissed.

Nidhan Singh, vide sale deed dated 27.06.1995 sold the land measuring 11 kanals 8 marlas to the LRs of Gujjar Singh, who further sold to respondent no.1/plaintiff-Hardial Singh. It is in these circumstances, declaration aforementioned, has been granted in the suit.

The genesis of the judgments had been that Nidhan Singh was

having the total land measuring 34 kanals 10 marlas and already sold 11 kanals 8 marlas, had the ownership of 7 kanals odd marla and therefore, the appellant could not have acquired the sale certificate on 19.11.2005 which was, post sale, dated 27.06.1995.

The trial Court framed the following issues:-

- “1. Whether land attached on 15.09.2003 regarding 20 kanals 10 marlas of land has been wrongly attached in execution filed as Hardeep Singh vs. Nidhan Singh and further has been wrongly sold in execution proceedings?OPP
2. Whether sale certificate issued by the Court on 19.11.2005 is liable to be set aside?OPP
3. Whether plaintiff is entitled for the relief of declaration as prayed for?OPP
4. Whether plaintiff is entitled for the relief of permanent injunction as prayed for ?OPP
5. Relief.”

The trial Court as noticed above decreed the suit and the appellant was not successful before the Lower Appellate Court. The genesis of the judgments and decrees of both the Courts below had been on the issue no.1.

Mr. G.S.Sindhu, learned counsel appearing on behalf of the appellant raised the following pleas:-

The suit as per sub-rule 3 of Rule 92 of Order 21 was not maintainable. The plaintiff was aware of the possession of Hardeep Singh

which came to the light in the litigation initiated by son Narinder Singh against Pritam Singh seeking specific performance of the agreement to sell which had attained finality upto the Highest Court. Even the objections were also dismissed against which civil revision petition filed has also been dismissed by this Court vide order dated 13.11.2006. The aforementioned order was on the record of the Court below but the same has not been noticed. Even issue of maintainability was not framed. An objection as per the provisions of Section 3 of Limitation Act, can always be taken at any stage of suit, appeal or second appeal. The Court below erroneously framed the issue by treating the date of attachment as 15.09.2003 instead of 19.11.2003. The execution application was filed immediately when the Lower Appellate Court had confined the decree of specific performance to the alternative. The sale by LRs of Gujjar Singh in the year of 1995 was during the subsistence of agreement to sell dated 01.10.1995. The aforementioned fact has not been adjudicated by both the Courts below that the suit was also barred by law of limitation and thus, urged this Court for setting aside the findings under challenge.

Mr. G.S.Nagra, learned counsel appearing on behalf of respondent no.1/plaintiff supported the judgments and decrees of the Courts below by raising the plea of bonafide purchaser for a valuable consideration. It was submitted that once Nidhan Singh was owner of total land measuring 34 kanals 10 marlas and had already sold the land measuring 11 kanals 10 marlas on 27.6.1995 and he was owner only of 7 kanals odd marla, therefore, the sale certificate on 19.11.2005 in respect of

land measuring 20 kanals 10 marlas could not have been issued, in other words, he did not have any title or ownership of the aforementioned land.

Since there was no impediment regarding alienation of the suit property, the respondent-plaintiff after making reasonable inquiry vide sale deed dated 11.06.2003 purchased the land measuring 11 kanals 8 marlas. The judgment and decree relied upon by the plaintiff in a suit titled as Narinder Singh vs. Pritam Singh, wherein, appellant was arrayed as party and the factum of alleged possession being in the knowledge except pleadings was not part and parcel of the record of the Courts below. In other words, appellant did not lead evidence in terms of pleadings in the written statement and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of Courts below and of the view that it is a fit case where the matter requires to be re-visited by the Lower Appellate Court as majority of the evidence is already on record. The Lower Appellate Court can always take the cognizance of the judgment and decree rendered in civil suit titled as “Narinder Singh vs. Pritam Singh” by exercising the powers under Order 41 Rule 27 CPC as the land measuring 20 kanals 10 marlas was attached on 19.11.2003 but while rendering the findings on issue no.1 against appellant and in favour of the plaintiff, did not advert to the provisions of Order 21 Rule 54 of CPC which read thus:-

“54. Attachment of immovable property:- (1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or

charging the property in any way, and all persons from taking any benefit from such transfer or charge.

“(1-A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of property and then upon a conspicuous part of the Court house and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate [and where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.]”

The provisions of sub-rule 3 of Rule 92 Order 21 are also required to be looked into. The same reads thus:-

“3. No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.”

The Court can entertain the objection qua limitation as per provisions of Section 3 of Limitation Act which reads as under:-

3. Bar of limitation.—

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be

dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act— (2) For the purposes of this Act—"

(a) a suit is instituted— (a) a suit is instituted—"

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted.

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

All the aforementioned legal pleas have not been adverted to.

Without commenting upon the merit and de-merit of the matter, I deem it

appropriate to remit the matter to the Lower Appellate Court by setting aside its judgment and decree. The Lower Appellate Court is directed to look into all the aforementioned legal points and decide the appeal in accordance with law preferably within a period of ten (10) months from the date of receipt of certified copy of this order.

The parties through their counsels are directed to appear before the Lower Appellate Court on 21.12.2018.

The appeal is disposed of.

(AMIT RAWAL)
JUDGE

November 21, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No