

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3156 of 2018(O&M)

Date of Decision:1.8.2018

Gurbaz Singh and others

---Appellants

vs.

Satnam Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Gurmandeep Singh Sullar, Advocate
for the appellants

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit filed by the plaintiffs-appellants, sons of Gurcharan Singh (since deceased) for possession of land measuring 93 kanal 7 marlas, detailed in head note of the plaint was dismissed vide judgment and decree dated 20.11.2015 passed by the Civil Judge (Junior Division), Karnal (hereinafter to be referred to as “the trial court”) and the appeal preferred by unsuccessful plaintiffs-appellants did not find favour with the Additional District Judge, Karnal.

In brief, case of the appellants is that Gurcharan Singh, their father had executed sale deed dated 22.12.1988 in respect of suit land in favour of defendants No. 1 to 3. The sale deed dated 22.12.1988 is of no

consequence as the plaintiffs had become owner of the suit property by dint of decree dated 20.9.1988. Defendants No. 1 to 3 clandestinely transferred the suit land in favour of defendant No. 4 vide sale deed dated 16.6.1998.

Defendants No. 1 to 3 were proceeded against ex parte as they failed to cause appearance despite service. Defendant No. 4 filed the written statement taking preliminary objections inter alia maintainability of the suit; suit being time barred; suppression of true and material facts; without any cause of action and plaintiffs being estopped by their own act and conduct to file the suit. It is averred that the alleged decree dated 20.9.1988 is nothing but a fraud played by the plaintiffs and the family settlement so alleged by the plaintiffs was never arrived at between the plaintiffs and their father. The sale deed dated 22.12.1988 is for valid sale consideration and mutation of the same was sanctioned in favour of defendants No. 1 to 3. The said fact was within knowledge of the plaintiffs as the plaintiffs and defendants No. 1 to 3 are residents of the same village and suit land is also situated there. The registered sale deed dated 22.12.1988, mutation sanctioned on its basis as well as entries in khasra girdawaris in favour of defendants No. 1 to 3 were never challenged by the plaintiffs during life time of their father. The answering defendant after exercising due care and caution purchased the suit land from defendants No. 1 to 3 vide registered sale deed dated 16.6.1998, mutation was sanctioned in his favour and khasra girdawari is also in his name.

The controversy between the parties led to framing of issues, reproduced in para 13 of the judgment of the trial court.

The trial court in para 32 of the judgment has held that after

having entered into an agreement to sell, a collusive decree was suffered by Gurcharan Singh in favour of his sons and thereafter the suit property was sold. Mutation (Ex. D8) was sanctioned in favour of defendants No. 1 to 3 on the basis of sale deed Ex. P6 in the year 1988 itself. Defendants No. 1 to 3 further sold the suit property in favour of defendant No. 4 vide Ex. DW1/C. It is surprising that the plaintiffs neither challenged the mutation nor the sale deed until their father Gurcharan Singh expired. They chose to wait for death of their father for instituting the present suit. This shows that they did not have the courage to file the suit earlier during the life time of Gurcharan Singh. Eventually, in view of findings recorded on issue No. 1, the trial court dismissed the suit.

As has been noticed hereinbefore, the plaintiffs-appellants remained unsuccessful before the first Appellate Court.

Counsel for the appellants would urge that as Sh. Gurcharan Singh suffered decree dated 20.9.1988 on the basis of family settlement in favour of his sons (appellants herein), he had no right to alienate the suit land in favour of defendants No. 1 to 3 vide sale deed dated 22.12.1988. Further argued that as no right of ownership was conferred upon defendants No. 1 to 3 on the basis of sale deed Ex. P6, defendants No. 1 to 3 cannot confer any right of ownership upon defendant No. 4 on the basis of sale deed dated 16.6.1998 Ex. DW1/C. Further submitted that the appellants being owner of the suit land on the basis of judgment and decree dated 20.9.1988 that has not been challenged in any proceedings before a court of law much less set aside, the courts have committed a serious error rather perversity either by commenting upon correctness of the judgment and

decree dated 20.9.1988 or there being any collusion between the appellants and their father, to disentitle them the relief of possession, as prayed for.

I have heard counsel for the appellants and perused the paper book particularly the judgments impugned.

Counsel for the appellants, in response to a query, would inform that father of the plaintiffs-appellants passed away sometime in the year 2007-08. Though the courts below have said a lot about the judgment and decree dated 20.9.1988 and collusion between the appellants and their father but as a matter of fact, the primary issue involved in the present case is whether defendants No. 4 is a bona fide purchaser of suit land from defendants No. 1 to 3 who purchased land in December 1988.

The trial court in para 31 has noticed that recital in the sale deed Ex. P6 shows that there was a prior agreement between Gurcharan Singh and defendants No. 1 to 3 and Gurcharan Singh had already obtained a sum of Rs. 40,000/- as earnest money. Counsel has not disputed these factual findings recorded by the trial court. On the basis of sale deed dated 22.12.1988, mutation (Ex. D8) was sanctioned in favour of defendants No. 1 to 3 in the year 1988. Possession of the sold land was delivered to the vendees on the basis of sale deed Ex. P6. After 10 years of purchase by defendants No. 1 to 3, they sold the land to defendant No. 4 vide sale deed executed on 16.6.1998. On the basis of sale deed in favour of defendant No. 4, not only mutation was sanctioned in his favour but even revenue entries were also changed from the names of defendants No. 1 to 3 to that of defendant No. 4. In the given scenario, the courts have rightly held that defendant No. 4 is a bona fide purchaser for consideration without notice of

judgment and decree passed in September 1988. In this view of the matter, consistent findings recorded by the courts upholding plea of bona fide purchaser by the vendees do not suffer from an error much less perversity warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

1.8.2018
paramjit

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