

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

RSA No.3942 of 2017 (O&M)

Date of decision:12.11.2018

Narinder Singh

... Appellant

Vs.

Nishan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun William, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-plaintiff has not been successful in seeking declaration of acquiring ownership and possession of land measuring 22 kanals (hereinafter referred to as “suit land”) on the basis of registered sale deed dated 27.02.1998 executed by Gurcharan Singh sonof Mihaan Singh for consideration of ₹1,87,000/-.

It was alleged that by virtue of sale deed, aforementioned, plaintiff had become the owner of the suit land, therefore, defendants no.3 and 4 were alleged to have derived the title with regard to land measuring 22 kanals from the common vendor, thus, they could not have transferred the suit land, vide sale deeds dated 20.10.2006, 18.07.2007, 10.7.2008, 7.5.2010 and 18.11.2011. The subject matter of suit land in the sale deed was 22 kanals. On payment of consideration, possession was taken. Even the mutation in this regard was sanctioned. When defendants no.1 to 3

extended threats, the suit aforementioned claiming the relief of injunction was filed.

The defendants opposed the suit and alleged that Gurcharan Singh was the original owner of suit land and vide sale deed dated 28.07.1966, had sold the land measuring 24 kanals in favour of Surjit Singh and Baldev Singh sons of Darshan Singh. Nishan Singh and Mangal Singh sons of Gurcharan Singh filed a suit for pre-emption qua the suit land and as per the judgment and decree dated 27.10.1967, the land measuring 16 kanals was considered to be owned by Nishan Singh and Mangal Singh and 8 kanals from the total land of 24 kanals was declared as ownership of Surjit Singh and Baldev Singh with a rider that 16 kanals from the total 24 kanals of land was held to be mortgaged on behalf of Nishan Singh and Mangal Singh in favour of Surjit Singh and Baldev Singh for a period of two years. The aforementioned mortgage of land had not been redeemed. In this regard, Surjit Singh and Baldev Singh filed a suit for possession against Gurcharan Singh which was decreed on 15.4.1982. Gurcharan Singh filed an appeal before the Lower Appellate Court which was dismissed. Surjit Singh and Baldev Singh sold the land in favour of defendants no.5 to 8, who further sold the same in favour of defendant no.9 and in the similar fashion, defendants no.9 to defendants No. 10 and 11. Defendant no.11 further sold the land measuring 22 kanals 4 marlas in favour of Raunak Singh son of Mukhtiar Singh, vide registered sale deed 07.05.2010, who further sold to Bakshish Kaur vide sale deed dated 18.10.2011.

The plaintiff examined himself as PW1 and Gurbachan Singh as PW2 and closed the evidence. On the other hand, defendants examined Gurbej Singh as DW1 and thereafter, closed the evidence.

On the preponderance of the evidence, the trial Court dismissed the suit and the appeal taken before the Lower Appellate Court was also dismissed.

Mr. Arun William, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have failed to appreciate that he was in possession of the suit land. The suit land by virtue of decree dated 20.10.1984 was reverted in the column of ownership in the name of Gurcharan Singh. In such circumstances, the appellant as per the provisions of Section 41 of Transfer of Property Act was entitled to seek the protection as bonafide purchaser. The Tehsildar, vide order dated 15.09.2004 had ordered the correction of khasra girdawari. Baldev Singh and Surjit Singh had never been in possession of the suit land and therefore, the subsequent sale deeds, post the sale deed of the plaintiff, were not valid in law, thus, the subsequent vendees cannot take the protection of Section 41 of Transfer of Property Act.

I am afraid the aforementioned argument is not sustainable for the simple reason that vendor of the plaintiff did not have any title in the suit land as it was sold way back in 1966. Any subsequent sale deed by the erstwhile vendor cannot be said to be a valid sale deed. Any person who intends to buy the land has to make reasonable enquiry. No evidence in this regard has been led. In such circumstances, the plaintiff cannot be termed to

be a bonafide purchaser as per the provisions of Section 41 of Transfer of Property Act. The decree of redemption has attained finality as Gurcharan Singh did not succeed in appeal. The pre-emption decree as noticed above, is also a matter of record. By virtue of which, 8 kanals of land were held to be in ownership of Surjit Singh and Baldev Singh and 16 kanals in favour of Nishan Singh and Mangal Singh, thus, for all intends and purposes, Gurcharan Singh was never owner of land measuring 24 kanals, therefore, could not part with the suit land.

As an upshot of my findings, arguments of Mr. William have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below.

No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 12, 2018
savita

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