

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

-.-

RSA 4368 of 2017 (O&M)

Date of decision: 08.05.2018

Balkar Singh

..... Appellant

Versus

Didar Singh and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Sumeet Puri, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

CM 11312-C of 2017

Prayer in this application is for condonation of delay of 299 days in re-filing the appeal.

In view of averments made in the application supported by an affidavit of the applicant and arguments advanced, the application is allowed and delay of 299 days in re-filing the appeal stands condoned.

CM 11313-C of 2017

Prayer in this application is for condonation of delay of 36 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the applicant and arguments advanced, the application is allowed and delay of 36 days in filing the appeal stands condoned.

Main case

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration, permanent

injunction and in the alternative, for possession and recovery filed by Didar Singh, plaintiff was decreed to the effect that general power of attorney dated 15.12.2004, sale deed No. 3577 dated 02.03.2006, mutation No. 2920 and sale deed No. 466 dated 17.05.2006 are held to be illegal, null and void. Further, appellant/defendant No. 4 is restrained from interfering in peaceful possession of the plaintiff and transferring, alienating or mortgaging suit land to any other person vide judgment and decree dated 17.02.2014. The judgment and decree passed by the trial Court led to filing of three appeals i.e. one filed by defendants No. 1, 2, other by Karmesh Kumar, defendant No. 3 and third one by Balkar Singh (appellant herein) that came to be disposed of by the first appellate Court vide common judgment and decree dated 11.07.2016 whereby the impugned judgment and decree passed by the trial Court were ordered to be affirmed.

Counsel for the appellant would argue that the appellant purchased suit land from Karmesh Kumar-defendant No. 3 vide sale deed No. 466 dated 17.05.2006. It is argued that on the basis of power of attorney executed by Didar Singh in favour of Raj Kumar Goyal - defendant No. 1. Raj Kumar Goyal executed sale deed in favour of Kusum Goyal defendant No. 2. Kusum Goyal alienated that property in favour of defendant No. 3 and defendant No. 3 further alienated the suit property in favour of appellant/defendant No. 4. It is further argued that the appellant raised plea of bona fide purchaser for consideration without notice and has successfully established his plea in this regard, therefore, findings recorded by the Courts negating plea of bona fide purchaser raised by the appellant cannot be allowed to sustain and liable to be set aside. It is further argued that in case

the judgments and decrees passed by the Courts are held to be legal, it would be of serious consequence for the appellant who has parted with huge amount of more than Rs.10,00,000.00 for purchasing suit property from Karmesh Kumar.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to recapitulate that in the regular second appeal, it is not open for the Court to appreciate the evidence to record a finding different from what has been consistently held by the Courts.

Counsel for the appellant has not raised a question of law that needs determination after notice to the contesting party. He has not challenged findings of the trial Court recorded in para 36 of the judgment that possession of suit land was never delivered by its erstwhile owner Shri Didar Singh in favour of defendants No. 1 and 2 and as a natural corollary, defendants No. 1 and 2 could not deliver possession of khasra No. 774 to defendant No. 3, vendor of the present appellant. Counsel would fairly concede that possession of the suit land continued to be with the respondent/plaintiff and the same never came in the hands of his (appellant's) vendor.

Section 3 of the Transfer of Property Act, 1882 (in short, the Act) deals with interpretation clause and term 'a person is said to have notice' is defined in the following words:-

“of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it”

Explanation II to the said definition, relevant in the present

context, reads as follows:-

“Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.”

Counsel for the appellant in response to a query, has fairly conceded that there is no evidence on record that the appellant made any inquiry from Didar Singh as to how he happens to be in possession of suit property despite their being a sale deed in favour of defendant No. 2 (Kusum Goyal) and sale deed executed by defendant No. 2 in favour of defendant Karmesh Kumar, vendor of the appellant/defendant No. 4. This very fact negates plea of the appellant that he was a bona fide purchaser of suit land and is entitled to protection of relevant provisions of the Transfer of Property Act.

No other point has been raised.

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

No order as to costs.

However, nothing stated hereinbefore shall cause prejudice to right of the appellant to take recourse to appropriate remedy in accordance with law, against his vendor for recovery of money stated to be paid under the sale deed.

(Rekha Mittal)
Judge

08.05.2018
mohan bimbra

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