

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

105

**RSA-5234-2017 (O&M)
Date of Decision : 04.07.2018**

Gulzar Singh

..... Appellant

Versus

Tarsem Lal and others

..... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Munish Gupta, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the lower appellate court reversing that of the trial court and thereby allowing an appeal filed by the respondents.

The respondent No.1 had filed a suit for declaration that he was an exclusive owner in possession of 1 kanal 10 marlas of land which he had purchased from the original owner. As per the respondent No.1, after the registration of sale deed he entered into possession but inadvertently could not get the land mutated in his name and taking advantage of that the original owner had sold the land to the present appellant but this would not affect his right. The appellant took up three pleas. First plea of the appellant was that he was a bonafide purchaser, the second plea was that the suit was barred by limitation and the third

plea was that once the case of respondent No.1 was that he had purchased the share out of the joint land and therefore co-sharers in the joint khata had to be impleaded and the respondent No.1 could not claim that he was an exclusive owner of any land measuring 1 kanal 10 marlas. The trial court held that the appellant was a bonafide purchaser and also held that the suit was bad for non-joinder of necessary parties and dismissed the suit. The appeal of the respondent No.1 having been allowed the appellant is before this Court.

In the first place, it has to be noticed that the argument regarding the appellant being a bonafide purchaser is neither here nor there. Though the appellant was a bonafide purchaser but in the present case the seller was not a person who had entered into a prior agreement to sell but who retained the title in himself. Here the seller had previously sold the property & had no title left in the property to pass on to the appellant and therefore the bonafide of the appellant can not come to his aid.

Counsel for the appellant has relied upon Section 41 of the Transfer of Property Act. This argument also has to be rejected. It is trite to say that mutation does not confer title and therefore merely because the respondent No.1 did not get the sale mutated can not give rise to the conclusion that he had allowed the original seller to be the ostensible owner.

As regards the plea of limitation, this is also well settled law that there is no limitation for a suit based on title. Further the mere fact that the respondent No.1 had purchased a share would not render the frame of the suit so defective as to make it liable for dismissal.

Keeping in view the entire conspectus of fact and law, I do not see any reason to interfere with the decision of the judgment of the lower Appellate Court.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

July 04, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No