

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.5832 of 2017 (O&M)

Date of Decision: August 29, 2018

Amarjit Singh

...Appellant

Versus

Kuldeep Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Avtar Singh Bhatti, Advocate for
Mr. A.S.Barnala, Advocate,
for the appellant.

AMIT RAWAL, J.

Appellant- defendant No.36 is aggrieved of the judgments and decrees of the courts below, whereby the suit of plaintiff- Kuldeep Singh, had been decreed.

Plaintiff instituted the suit for declaration and permanent injunction on the ground that the property in question was owned by one Sham Singh son of Midda Singh, who died in 1964 issueless and unmarried. He had three sisters, namely, Punjab Kaur, Ram Kaur and Har Kaur. Plaintiff is none else but the legal heir of the aforementioned sisters and, therefore, he is owner in possession of the suit property to the extent of his share specified therein.

Defendant Nos.1, 18, 20, 21, 27 and 30 appeared and filed written statement admitting the claim of plaintiff. Defendant No.35- Rajwinder Kaur appeared and filed written statement. Defendant No.36 also contested the suit on the premise that he had become the owner by virtue of

the sale deed dated 26.4.2010 for consideration of ₹ 2,00,000/- and had constructed three shops.

The trial court, on the basis of the aforementioned pleadings of the parties to the lis, framed the following issues:-

- 1) Whether the plaintiff is entitled for declaration as prayed for? OPP
- 2) Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
- 3) Whether the suit is within limitation? OPD
- 4) Whether the plaintiff has no locus standi to file the present suit? OPD
- 5) Whether defendant no.35 is bonafide purchaser of the suit property? OPD
- 6) Whether the defendants are entitled for special costs? OPD
- 7) Relief.

Since the ownership of Sham Singh son of Midda Singh was admitted, the court held that Sham Singh was owner of the suit property. The children of the sister of Sham Singh had filed a civil suit for possession, which was dismissed by the trial Court vide judgment and decree dated 27.3.1971, but decreed by the Lower Appellate Court vide judgment and decree dated 8.9.1975, whereby Gurbachan Singh etc. were held to be owner of 107 kanals 1 marlas and were also declared mortgagors of remaining land measuring 79 kanals 8 marlas. It was also held that Punjab Kaur along with two sisters, namely, Ram Kaur and Har Kaur had become owner of the property of Sham Singh being Class-II heir and Harchand Singh etc. being Class-III heirs. The aforementioned judgment and decree became final as there was no appeal. In such circumstances, defendant No.35, who had purchased the property from Manjit Singh son of Jang

Singh could not become the owner as the title of Manjit Singh had not been proved.

Mr. Avtar Singh Bhatti Advocate for Mr. A.S. Barnala, learned counsel representing the appellant submitted that appellant- defendant No.36 is a bonafide purchaser for valuable consideration and, therefore, is liable to be protected under Section 41 of the Transfer of Property Act. I am afraid, the aforementioned argument is not able to cut ice, for, it has not been proved as to how and in what manner Manjit Singh was owner in possession and had sold the property to Rajwinder Kaur from whom appellant- defendant No.36 had purchased vide sale deed dated 26.4.2010. The decree conferring the title and ownership in respect of the suit property in favour of son of Punjab Kaur and her two sisters had attained finality.

For the reasons stated above, I do not find any illegality or perversity in the concurrent findings of courts below. Resultantly, the appeal is dismissed. Consequently, the application seeking condonation of delay of 82 days in filing the appeal is also dismissed.

August 29, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No