

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

**RSA No.595 of 2017 (O&M)
Date of Decision.10.12.2018**

Mohan Singh

....Appellant

Vs

Santokh Singh (D) through LR's and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Krishan Sehajpal, Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.1280-C of 2017

For the reasons stated in the application, delay of 113 days in re-filing of the appeal is condoned.

Application is allowed.

RSA No.595 of 2017

The appellant-plaintiff has not been successful in claiming declaration along with defendants No.8 to 14 by laying challenge to the sale deeds dated 3.8.1959 and 15.07.1960 executed by Bhan Singh and further sale deed by defendant No.1 on the basis of Will dated 15.01.1971 executed by Bhan Singh.

The suit aforementioned was filed on 12.09.2001 on the premise that one Roora Singh @ Roora had three sons namely Bhan Singh, Nathu and Labhu Ram. Bhan Singh and Nathu both were bachelor and died issueless whereas Labhu Ram had two sons Chanan Singh and Santokh Singh. Chanan Singh is the father of plaintiff and Santokh Singh is the defendant. Chanan Singh expired on 06.05.2003 whereas Bhan Singh died on 31.08.1972. The land

was purchased out of funds of the joint Hindu family property and therefore, the sale deeds could not have been executed by Bhan Singh as there was no legal necessity. The contents of the Will, prima facie, established to be forged and fabricated document. The plaintiff acquired the knowledge of the sale deed and subsequent mutations only in the month of July, 2001, few days before the filing of the suit.

Defendant No.1 opposed the suit by raising plea of limitation and locus standi. The factum of land being ancestral at the hands of Bhan Singh was denied. It was stated that Bhan Singh had purchased the suit land being tenant under the Punjab Security of Land Tenures Act, which resulted into order dated 31.03.1970.

In support of the aforementioned averments, plaintiff examined himself and closed the evidence whereas defendants examined seven witnesses.

Learned counsel appearing on behalf of the appellant submitted that both the Courts below have committed illegality and perversity in not noticing the fact that Bhan Singh had become owner in the year 1970 and therefore, he could not have sold the property in anticipation in the year 1959-60. The Will was surrounded by suspicious circumstances as the attesting witness had not been consistent and coherent, thus, the sale deed executed by Santokh Singh on the basis of title derived from the Will, being a beneficiary was also bad in law.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit, for, provisions of Section 43 of the Transfer of Property Act entitles a

person to enter into a sale in anticipation of having acquired title. For the sake of brevity, Section 43 of the Transfer of Property Act is reproduced as under:-

“43. Transfer by unauthorised person who subsequently acquires interest in property transferred.

—Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”

Even if believing that Bhan Singh was tenant and had initiated proceedings for claiming ownership, being an occupant tenant, which was conferred to him in 1970, sale deeds could not have been bad in law. Moreover, Mohan Singh son of Chanan Singh had no right as Bhan Singh had sold his own share to Santokh Singh. It is not established that Roor Singh was Karta of the family and Mohan Singh being 4th (fourth) generation in lineage had right regarding estate of Bhan Singh, which was to be devolved amongst Chanan Singh and Santokh Singh, being nephews. No documentary evidence in shape of revenue excerpt, in this regard, has been brought on record. In such circumstances, Court had no other option but to dismiss the suit.

In view of the aforementioned facts, I do not find any illegality and perversity in the concurrent finding of fact rendered by

the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 10, 2018
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No