

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

RSA No.6305 of 2018(O&M)

Date of decision: 3.12.2018

Amarjit Kaur and anotherAppellants

VERSUS

Jagdish Chander through his LR's and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. M.S. Bedi, Senior Advocate with
Mr. Sidhant Mehra, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directly challenges against concurrent findings recorded by the Courts whereby suit filed by Jagdish Chander (since deceased) now represented by his LR's and Joginder Singh son of Sh. Sant Ram for declaration with consequential relief of permanent injunction was decreed by the trial Court vide judgment and decree dated 06.10.2016 and appeal preferred by unsuccessful defendant Nos.4 and 5 did not find favour with the Additional District Judge, Gurdaspur as the same was dismissed on 10.10.2018.

The appellants/defendants No.4 and 5 are purchasers of land measuring 25 kanal 2 marlas from Om Piari – defendant No.1, one of the daughters of Sant Ram as mutation qua inheritance to Sh. Sant Ram was sanctioned in favour of his class I heirs including Om Piari to the extent of 1/5th share each. The sale deed in favour of the appellants was executed on 22.05.2006.

A relevant extract from order dated 28.11.2018 passed by this Court reads as follows:-

The present appeal directs challenge against concurrent findings of fact recorded by the courts whereby dispute with regard to inheritance to the estate of Sh. Sant Ram qua land measuring 136 kanal 8 marlas has been decided in favour of the respondents-plaintiffs who had set up Will dated 17.7.1985 purported to be executed by Sh. Sant Ram in favour of his sons and excluded his three daughters from inheritance. The suit was instituted on 18.5.2006. Om Piari, one of the daughters of Sant Ram and defendant No. 1 executed sale deed dated 22.5.2006 in favour of defendants No. 4 and 5 to the extent of 25 kanal 2 marlas being 1/5th share on the basis of natural succession. The plea of the appellants that they are bona fide purchasers from Smt. Om Piari has been rejected on the premise that sale is hit by principle of lis pendence.

Counsel for the appellants has sought to make submissions to assail findings of the courts on issue No. 1 pertaining to legality and validity of the Will dated 17.7.1985. Since appellants do not claim any right of inheritance to Sh. Sant Ram either on the basis of natural succession or otherwise, counsel prays for a short accommodation to examine if the appellants can make any submissions to challenge findings of the courts qua the Will in question.”

Counsel for the appellants is not in a position to advance any meaningful arguments, in response to order dated 28.11.2018 that the

appellants are competent to challenge the legality or/and validity of Will dated 17.07.1985 propounded by the respondents/plaintiffs. Indisputably, sale deed dated 22.05.2006 in favour of the appellants was executed by Smt. Om Piari after institution of the suit on 18.05.2006, therefore, the same is hit by the principle of lis pendens, thus, plea of bona fide purchaser is not available to the appellants. That being so, the present appeal sans merit and liable to be dismissed accordingly.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. However, the appellants would be at liberty to take recourse to appropriate remedy, if permissible, against their vendor for recovery of sale consideration.

DECEMBER 3, 2018

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no