

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

**RSA No.929 of 2018 (O&M)
Date of Decision:09.02.2018**

Shakuntla Devi and another Appellants

Vs.

Mahavir and others Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Mohinder Pal, Advocate for the appellants.

RAMENDRA JAIN, J. (Oral)

By way of this regular second appeal, defendants No.7 and 8 having purchased some portion of suit land, subsequent to the sale deeds in favour of respondents No.1 to 3 – plaintiffs have laid challenge to the judgment and decree of the First Appellate Court dated 21.10.2017 reversing the judgment and decree of the trial Court dated 20.09.2014.

Put pithily, defendants No.3 to 5 (respondents No.6 to 8 herein) were joint owner in possession of 45 kanals and 18 marlas of land, according to jamabandi for the year 2001-02 in equal shares along with their mother Kastoori. Out of the same, land measuring 10 kanal was acquired by the State Government, therefore, defendants No.3 to 5 left with only 35 kanals 18 marlas of land in equal shares. However, in the next jamabandi for the year 2006-07, the area of defendants No.3 to 5 was increased by 3 kanals 7 marlas showing their ownership over 49 kanals 5 marlas by increasing the area of Killa No.24 from 11 kanal 7 marlas in place of 8 kanal 0 marla. This clerical mistake was committed by revenue officials.

Be that as it may, the defendants No.3 to 5 were legitimate owners of 35

kanals 18 marlas of land in equal one third share of the suit land each.

Defendant No.3 out of his one third share of 11 kanal 18 marlas sold 10 kanal 7 marlas to respondents No.1 to 3 – plaintiffs vide three different sale deeds No.1095 dated 31.05.2006, 494 dated 26.05.2008 and 2928 dated 28.01.2009 against which mutations Ex.P4, Ex.P.6 and Ex.P.13 were entered and sanctioned by the Revenue Officers. Therefore, defendant No.3 left with only 1 kanal 11 marlas 3 Sarsai of land to his credit but he further sold 2 kanal 10 marlas of land to respondent No.1- plaintiff vide sale deed No.3856 dated 24.02.2011 illegally, because he could only sell 1 kanal 11 marlas 3 Sarsai land to his credit, and not more than that. The things did not rest here. Defendant No.3 thereafter also kept on selling land to appellants vide subsequent sale deeds No.4034 dated 08.03.2011 and 4193 dated 17.03.2011 against which mutations Ex.P17 and P.18 were sanctioned whereby he sold 2 kanal 2 marlas of land to them.

Respondents No.1 to 3- plaintiffs by way of their suit for declaration against the appellants as well as revenue officials and their vendors i.e. respondents No.6 to 8 challenged the sale deeds and mutations Ex.P17 and P.18 in favour of the appellants on the ground that since defendant No.3 had left with no right, title or interest in the suit land after selling his entire one third share, therefore, the sale deeds, if any, executed by him in favour of the defendant- appellants were illegal and wrong and had no binding effect upon their rights.

The learned trial Court after holding trial, dismissed the suit of respondents No.1 to 3 – plaintiffs vide judgment and decree dated 20.09.2014.

Being aggrieved, the respondents No.1 to 3 - plaintiffs preferred first appeal which was accepted by the First Appellate Court vide judgment and decree dated 21.10.2017 thereby decreeing their suit in toto, declaring the sale deeds and mutations in favour of the appellants-defendants as illegal, null and void.

Learned counsel contends that the possession of land measuring 2 kanal 2 marlas out of the suit land was handed over by their vendor to the appellants `at the time of execution of the sale deeds No.4034 dated 08.03.2011 and 4193 dated 17.03.2011 in their favour. Therefore, simpliciter suit of respondents No.1 to 3 – plaintiff for declaration without seeking the relief of possession was liable to be dismissed being not maintainable. The First Appellate Court failed to appreciate that appellants were bonafide purchasers of the suit land and, therefore, the sale deeds in their favour could not have been set aside, because at the time of purchase of the suit land measuring 2 kanal 2 marlas, mutations qua the alleged sale deed of respondent No.1- plaintiff was not found entered and sanctioned in the revenue record inasmuch as the same was entered and sanctioned after the one month of execution and registration of the sale deed in favour of the appellants and sanctioning of the mutation in favour of the appellants.

Having given considerable thoughts to the above two submissions made by learned counsel for the appellants, I find the instant second appeal completely devoid of any merit for the reasons to follow:-

(1) Admittedly, both the sale deeds in favour of the appellants on the basis of which they are claiming their title over the suit property are after the date of all the registered sale deeds in favour of respondent No.1-

plaintiff.

It is not disputed that respondent No.7 – defendant No.3 was owner of 11 kanals 18 marlas 3 Sarsai i.e. one third share in the total suit land measuring 35 kanals 18 marlas which he had already sold to respondent No.1 – plaintiff vide four different sale deeds in between the year 2006 to 2011, rather sold 19 marlas in excess illegally to respondent No.1- plaintiff. Therefore, it is evident on record that after execution of last sale deed No.3856 dated 24.02.2011, defendant No.3 left with no right, title or interest in the suit land, and thus was not legally entitled to pass any title in favour of the appellants. In other words, the appellants cannot claim any title in the suit land on the basis of sale deed executed by defendant No.3 in their favour, when he had left with no right title or interest in the same.

I have gone through the impugned judgment of the First Appellate Court and find no illegality or perversity in the same.

No question of law much less substantial raised or arises in this appeal.

In view of the discussion made above, this appeal fails and is dismissed.

February 09, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No