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504

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

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Date of decision : 12.04.2019

Banta Singh (deceased) through LRs and another

... Appellants

Versus

Malkiat Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Kumar Bakshi, Advocate
for the appellants.

Mr. Amit Dhawan, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present regular second appeal, at the instance of the appellants-defendant Nos.1 and 2, is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the respondent No.1-plaintiff, has been decreed and the judgment and decree of the trial Court for the recovery of ₹24,000/- has been set aside and substituted by a decree for possession.

Respondent No.1/plaintiff-Malkiat Singh, since deceased, represented by his LR's, during his life-time, instituted the suit for possession and in alternative, recovery of ₹24,000/-, in respect of a house described in the headnote of the plaint, on the premise that vide sale deed dated 05.02.1979, had purchased it, from Gurchetan Singh defendant No.4 and Pavitar Singh, predecessor in interest, of defendants No.5 to 7. The share of Banta Singh came to defendant No.4, through a family settlement

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in the year 1977, and that of Dalip Singh was inherited by his son Pavitar Singh, on his death. However, defendant Nos.1 to 3 i.e. Banta Singh, Balraj Singh and Kanwaljit Singh, had illegally and forcibly taken the possession of the suit property. There was a defect in the title and in that eventuality, claimed the recovery of ₹24,000/-

The suit was contested by the three sets of the defendants i.e. defendant Nos.1 & 2, defendant No.4 and defendant Nos.5 to 7.

Defendant Nos.1 and 2 filed the joint written statement and denied that Pavitar Singh had no share in the property because Dalip Singh, his father, had no share in it. The house was owned and possessed solely by defendant Nos.1 and 2/appellants. Defendant No.2/Balraj Singh had purchased half share of the suit property from his father, vide sale deed dated 20.02.1979 and denied the family settlement dated 18.03.1977 and 16.01.1977. The plaintiff had no locus standi to file the suit. It was defendant No.1/Banta Singh, who was the owner and Dalip Singh, their predecessor, had no share.

Since the parties were at variance, the following issues were framed by the trial Court:-

- 1. Whether Sh. Dalip Singh was owner of half share of the property in suit? If so to what effect? OPP*
- 2. Whether Pavitar Singh son of Dalip Singh and Gurchetan Singh defendant No.4 sold the house in suit to the plaintiff and his brother Tarlochan Singh, Mohan Singh etc., vide sale deed dt. 5.2.1979, for a consideration, of ₹ 24,000/-? If so to what effect? OPP*
- 3. Whether defendants No.1 to 3 are in illegal possession of the suit property? If so to what effect? OPP*
- 4. Whether any family partition was effected between the*

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parties after the execution of the sale deed? If so to what effect? OPP

5. Whether the plaintiff has no locus standi to file the suit?

OPP

6. Whether the plaintiff is estopped to file the suit by his acts and conduct? OPP

7. Whether the plaintiff is properly valued for the purpose of Court fee and jurisdiction? OPP

8. Whether the plaint is bad for mis-joinder and non-joinder of parties? OPD

9. Whether the suit is not maintainable in the present form? OPD

10. Whether the suit is within limitation? OPP

11. Whether the plaintiff is entitled to the possession prayed for? OPP

12. Relief.

Both the parties led extensive evidence in support of their respective cases.

The trial Court, on the basis of the evidence brought on record, though did not accept the sale deed holding Gurchetan Singh and Pavtiar Singh, not to be owner, decreed the suit in alternative by directing defendant Nos.4 and predecessors-in-interest of defendant Nos.5 to 7, to pay the amount of ₹24,000/-.

The appeal was preferred by defendant No.4-Gurchetan Singh. The lower Appellate Court by relying upon the family settlement dated 18.03.1977, set aside the findings of the trial Court and ordered for possession of the suit property.

It is, in these circumstances, defendant Nos.1 and 2/appellants, who were not aggrieved till such time, had approached this Court.

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Mr. Arun Kumar Bakshi, learned counsel appearing on behalf of the appellants-defendant Nos.1 & 2, submitted that concededly, Gurchetan Singh and Pavitar Singh or his predecessor-in-interest, Dalip Singh, was not having any title in the suit property. They were not having pre-existing right and the family settlement dated 18.03.1977 did not see the light of the day, rather the legal heirs of Pavitar Singh i.e. defendant Nos.5 to 7, denied that Dalip Singh had any right in the property and the entire property was solely owned by Banta Singh/defendant No.1 and also denied the sale deed qua half share in favour of the plaintiff. The contents of the written statement were enough for the lower Appellate Court, to dismiss the appeal, thus, there is illegality and perversity.

Mr. Amit Dhawan, learned counsel appearing on behalf of respondent No.1/plaintiff submitted that the plaintiff was the *bona fide* purchaser for a valuable consideration as on making the reasonable inquiry, it was found that it was Gurchetan Singh and Pavitar Singh, who were the owner of the property and purchased the share on payment of ₹24,000/-. There was defect in the title and asked for alternative relief. The appeal on behalf of appellants-defendant Nos.1 & 2, in the absence of challenge before the lower Appellate Court, is not maintainable.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that the following 'Substantial Question of Law' arises for determination:-

Whether the lower Appellate Court could decree the suit for possession, instead maintain the judgment and decree of the trial Court for recovery of ₹24000/- as family settlement could not confer title upon defendant Nos.4 & 5 to 7, particularly, when there is misreading of the contents of the written

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statement of defendant Nos.5 to 7.

It would be apt to extract the para Nos.2, 5 and 6 of the written statement of defendant Nos.5 to 7, who are none-else, but the successors-in-interest of Pavitar Singh son of Dalip Singh:-

"2. That para No.2 of the plaint is absolutely incorrect, wrong and denied. It is wrong that Sh. Dalip Singh was the owner of the ½ share of the house in dispute. The house in question is the property of Sh. Banta Singh and who is the owner and in possession of the same.

5. That para No.5 is absolutely wrong and denied. Sh. Banta Singh defendant No.1 is the owner of the house in dispute and has been in possession of the same for the last so many years.

6. That para No.6 of the plaint is incorrect, wrong, and denied. The house in dispute is the exclusive property of Sh. Banta Singh defendant no.1. It is admitted that Sh. Pavitar Singh has died. The answering defendants 5 & 6 are not the legal representatives and successors in interest of Sh. Pavitar Singh."

Once their own assertion established that their common ancestor Dalip Singh did not acquire any title, by way of inheritance and therefore, had no saleable and alienable right, could not sell half share to the plaintiff.

As regards the Gurchetan Singh, family settlement allegedly relied upon by him, has not seen the light of the day. By conduct of the parties, the family settlement cannot confer the title, which was not, in fact, reflected in the revenue record.

There is another aspect of the matter that the plaintiff was not aggrieved of the alternative relief of ₹24,000/- and it was only defendant No.4-Gurchetan Singh, who assailed the findings. Perhaps in order to avoid

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any criminal prosecution as he failed to prove the title before of the trial Court. Be that as it may, the decree of the trial Court was perfectly legal and justified, in the absence of any title of Gurchetan Singh or Pavitar Singh. Any registered sale deed would not confer a title upon a person, until and unless, he has or had alienable or saleable right.

Keeping in view the aforementioned facts, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law being illegal and perverse and the same is hereby set aside and that of the trial Court is restored. The Substantial Question of Law, as framed above, is answered in favour of the appellants-defendant Nos.1 and 2 and against the respondent/plaintiff. Resultantly, the present second appeal is allowed.

12.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**