

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

**RSA No.1652 of 2008 (O&M)
Date of Order: 08.03.2019**

Babli

..Appellant

Versus

Jai Parkash Gupta and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mohit Kumar Sharma, Advocate,
for the appellant.

Mr. Mukul Aggarwal, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below decreeing the suit for declaration with consequential relief of permanent injunction claiming that the plaintiff is owner of the property as per the family settlement arrived at which was acknowledged in a Memorandum of Family Settlement reduced into writing on 16.06.2002.

Defendant no.1 contested the suit and pleaded that she has purchased the property from defendant no.3, vide the sale deed executed on the basis of General Power of Attorney in favour of defendant no.2 dated 03.09.2002.

Both the courts on appreciation of the evidence found that the Memorandum of Family Settlement Ex.P5/A is proved on file and therefore, after the family settlement, defendant no.3 had no right, title or interest in

the property in dispute.

Learned counsel for the appellant submits that the appellant-defendant no.3, claims to be a bonafide purchaser for consideration and, therefore, she has right to protect the property. Learned counsel for the appellant has further submitted that Memorandum of Family Settlement was not admissible in evidence as it was un-registered. He relied upon a judgment passed by the Hon'ble Supreme Court in Civil Appeal No.3171 of 2018, decided on 23.03.2018 titled **Sita Ram Bhama vs. Ramvatar Bhama.** Learned counsel has further submitted that the Memorandum of Family Settlement is not signed by all the parties.

This court has considered the submissions of learned counsel for the appellant and find no substance therein.

It is apparent from the reading of the Memorandum of Family Settlement Ex.P5/A that oral family settlement was arrived at on 07.06.2002 between the family members which was reduced into writing in the form of Memorandum of Family Settlement on 16.06.2002. Execution of the aforesaid Memorandum of Family Settlement has been proved. Once defendant no.3-Prem Parkash Gupta was left with no right, title or interest after 07.06.2002, he had no right to transfer the property in question. Still further, it is well settled that no one can transfer better title than what one himself has. Hence, the plea of bonafide purchaser has no substance.

As regards second argument, it may be noted that the Memorandum of Family Settlement is not in the present form, rather recognizing an oral family settlement which had taken place on 07.06.2002. In the judgment relied upon by learned counsel for the appellant, the Hon'ble Supreme Court found that the Memorandum is not in

fact Memorandum but it is the deed of partition. Hence, the aforesaid judgment would have no application.

As regards the last argument, it may be noted that the learned first appellate court has dealt with the aforesaid contention as predecessor-in-interest of appellant has signed the Memorandum of Family Settlement. The family members who have not signed the Memorandum of Family Settlement are not disputing correctness thereof.

In view thereof, this court does not find any ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

March 08, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No