

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:20.2.2019

RSA No. 31 of 2014(O&M)

Smt.Radha Rani through her Lrs.

---Appellant

vs.

Manju Rani and others

---Respondents

RSA No. 32 of 2014(O&M)

Smt.Radha Rani through her Lrs.

---Appellant

vs.

Rajesh Bansal and others

---Respondents

RSA No. 34 of 2014(O&M)

Smt.Radha Rani through her Lrs.

---Appellant

vs.

Smt. Shashi Bala and others

---Respondents

RSA No. 268 of 2014(O&M)

Smt.Radha Rani through her Lrs.

---Appellant

vs.

Sunder Lal Mangla and others

---Respondents

RSA No. 1180 of 2014(O&M)

Smt. Radha Rani through her Lrs.

---Appellant

vs.

Smt. Sheela Devi and others

---Respondents

RSA No. 1404 of 2014(O&M)

Smt.Radha Rani through her Lrs.

---Appellant

vs.

Smt. Vijay Laxmi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Adarsh Jain, Advocate
for the appellant

Mr. Sudhir Aggarwal, Advocate
for respondents No. 2 to 4 in RSA No. 268 of 2014

Mr. Keshav Partap Singh, Advocate
for respondents No. 2 to 9 in RSA No. 31 of 2014
for respondents No. 1 to 3 in RSA No. 34 of 2014
for respondents No. 1 to 4 in RSA No. 32 of 2014
for respondent No. 4 in RSA No. 1180 of 2014
for respondents No. 5 and 6 in RSA No. 268 of 2014
for respondent No. 1 in RSA No. 1404 of 2014

Rekha Mittal, J.

CM No. 137-C of 2018 in RSA- 31 of 2014

Prayer in this application filed under Order 22 Rule 3 read with Section 151 of the Code of Civil Procedure is for impleading legal representatives of Radha Rani-appellant (since deceased).

In view of averments made in the application supported by an affidavit of Shailender and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para No. 2 of the application are allowed to be brought on record as legal representatives of Radha Rani-appellant (since deceased), for the purpose of present lis only, subject to just exceptions.

Amended Memo of Parties is taken on record.

Disposed of accordingly.

Main cases

This order will dispose of RSA Nos. 31, 32, 34, 268, 1180 and 1404 of 2014 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 31 of 2014.

The suit property was originally owned by Sh. Chhidda Mal, father-in-law of Smt. Radha Rani wife of late Sh. Shyam Sunder. Chhidda Mal suffered a decree dated 7.6.1988 in favour of his son Sh. Shyam Sunder qua the property in question. Sh. Shyam Sunder expired on 24.5.1992. The appellant has claimed ownership of the suit property on the basis of Will dated 20.4.1992 purported to be executed by Sh. Shyam Sunder.

The appellant challenged sale deed dated 10.2.1994 executed by Sh. Chhidda Mal in favour of Smt. Manju Rani who further sold the property to Sh. Lakhmi Chand, father of respondents No. 2 to 9 vide sale deed dated 25.1.1999. The plea of the appellant is that after death of Sh. Shyam Sunder, Chhidda Mal felt annoyed with the appellant and sold the property, detailed in para No. 2 of the plaint. The sale deeds in favour of defendants are stated to be illegal, null and void. She claimed declaration that she is absolute owner in possession of the suit property and a decree for possession be passed by way of consequential relief.

The suit was contested by respondents No. 2 to 9. They filed written statement raising preliminary objections inter alia non-maintainability of the suit; appellant has no locus standi to file the suit; suit being without cause of action and appellant being estopped from filing the

suit. They challenged the judgment and decree dated 7.6.1988 on the plea that the same is based on wrong facts and the appellant never became owner in possession of suit property as per Will dated 20.4.1992. It is further averred that answering respondents are bonafide purchasers for consideration and they purchased the suit property after making due enquiries.

The controversy between the parties led to framing of following issues:-

1. Whether plaintiff has become the owner in possession of the suit property on the grounds as alleged in the plaint? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
4. Whether suit is time barred? OPD
5. Relief

The trial court answered issue No. 1 against the plaintiff-appellant, issues No. 2 and 3 in favour of the respondents and issue No. 4 against the respondents and eventually suit filed by the appellant was dismissed. The appeal preferred by unsuccessful appellant did not find favour with the Additional District Judge, Palwal.

Both the courts have consistently held that the judgment and decree dated 7.6.1988 passed in favour of Sh. Shyam Sunder in suit titled “Shyam Sunder vs. Chhida Mal” is legally valid. However, the respondents-defendants are bona fide purchasers for consideration who

made due enquiries before purchasing the suit property from Sh. Chhidda Mal.

Counsel for the appellant would argue that findings recorded by the courts accepting plea of the respondents that they are bona fide purchasers of the suit property are not based upon correct appreciation of oral and documentary evidence on record. It is further argued that as the courts have upheld the judgment and decree dated 7.6.1988 passed in favour of Sh. Shyam Sunder and against Sh. Chhidda Mal whereby Chhidda Mal ceased to be owner of the suit land, Sh. Chhidda Mal had no authority to sell the suit property previously owned by Sh. Shyam Sunder but later inherited by the appellant on the basis of testamentary as well as natural succession being widow of Sh. Shyam Sunder.

Counsel representing the respondents, on the contrary, has supported concurrent findings recorded by the courts whereby plea of the respondents in respect of bona fide purchaser has rightly been accepted on detailed consideration of evidence on record when examined in the light of provisions of Section 41 of the Transfer of Property Act, 1882 (in short “the T.P. Act”). It is argued that the judgment and decree dated 7.6.1988 was never given effect to in the records maintained by revenue and municipal authorities nor there is any material on record that purchasers of property from Sh. Chhidda Mal ever had notice of the judgment and decree dated 7.6.1988. It is further argued that Smt. Radha Rani did not appear in the witness box to establish her plea that Chhidda Mal ever had any annoyance with the appellant or her family or the sale deed(s) executed by Sh. Chhidda Mal in favour of various purchasers were without notice and

knowledge of the appellant. According to counsel, the property continued to stand in the name of Chhidda Mal both in the revenue and municipal records, therefore, the purchasers on examination of relevant records were convinced that suit property was owned by Sh. Chhidda Mal and accordingly purchased the same for valuable consideration.

I have heard counsel for the parties, perused the paper book and records.

Section 41 of the T.P.Act deals with sale by an ostensible owner. The essential ingredients of Section 41 are as follows:-

1. The transferor must be an ostensible owner of the property
(with the consent, express or implied, of the persons interested in immovable property),
2. The transfer must be for consideration
3. The transferee must take reasonable care to ascertain that the transferor had power to make the transfer and must act in good faith.”

Section 41 is an exception to the general rule that a person cannot convey a better title than he himself has in the property. The equitable doctrine of estoppel contained in Section 115 of the Indian Evidence Act, 1872 is the basis of Section 41 of the T.P.Act.

Udai Bhan, one of the sons of the appellant was examined as her general attorney. The Appellate Court in para 26 of the judgment has noticed that Udai Bhan admitted that Chhidda Mal remained hospitalized and thereafter shifted to the house where he passed away. Their residential house is situated in the same khasra number. The impugned judgment and

decree were not got incorporated in the revenue and municipal records. In the municipal and revenue records, name of Chhidda Mal was recorded as owner in respect of suit property. He expressed his ignorance that Chhidda Mal used to deposit house tax in respect of the property sold to the respondents. He was aware of the construction raised by the respondents on the suit property but they did not raise any objection. He admitted that residential house is also in existence near the property in dispute.

Counsel for the appellant has not advanced any arguments much less meaningful that consistent findings recorded by the courts accepting plea of the respondents of bona fide purchaser for consideration and without notice suffer from an error much less perversity. He has not raised any question of law that needs determination in the instant case.

I have gone through the judgments impugned in the light of overwhelming evidence adduced by the respondents to establish their plea that they are bona fide purchasers for consideration without knowledge of judgment and decree dated 7.6.1988. That being so, there is no reason much less well founded to differ with findings of the courts as the same are neither erroneous nor perverse.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed with costs.

(Rekha Mittal)
Judge

20.2.2019
paramjit

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