

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

RSA No.2599 of 2018(O&M)
Date of decision: 04.10.2019

Geeta

... Appellant

Versus

Sanjay Saini and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Nandan Jindal, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the plaintiff-appellant was dismissed by the trial Court vide judgment and decree dated 21.11.2014. However, in an appeal filed by her, vide impugned judgment and decree dated 04.10.2017, her suit was partly decreed and she was held entitled to recover half share out of the sale consideration from her brother (defendant No.1). But, being still aggrieved, she is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a declaration that sale deed dated 13.02.2007, executed by defendant No.1 in favour of defendant No.2, qua a shop-cum-godown measuring 13.5 sq. yards, situated at Arya Samaj Road, Jind, was illegal, null and void.

In brief, the case set out by her was that suit property was originally owned by father of plaintiff and defendant No.1, namely, Ishwar Saini son of Atma Ram. The mother of the plaintiff died in the year 1988, whereas Ishwar Saini passed away on 24.03.2002. The deceased was

succeeded by plaintiff and defendant No.1 as his surviving heirs. Husband of defendant No.2, namely, Jagat Singh Redhu enticed defendant No.1 to sell the suit property. For, he had contacts in the administration, he got prepared forged documents qua succession of Ishwar Saini in favour of defendant No.1 only. Accordingly, the suit property was transferred in the house tax assessment records in the name of defendant No.1. Whereafter, Jagat Singh Redhu got executed the sale deed No.4620 dated 13.02.2007 in the name of his wife (defendant No.2) for a very meager amount i.e. Rs.69,000/-. It was in July, 2012, the plaintiff got to know that suit property has since been transferred in favour of defendant No.2, pursuant to sale deed dated 13.02.2007. Thus, the suit.

In the written statement filed by defendant No.1, he virtually admitted the claim of the plaintiff. However, it was pleaded that in the year 2004, he borrowed a sum of Rs.40,000/- as private loan for marriage of the plaintiff from Jagat Singh, husband of defendant No.2. Jagat Singh enticed him to mortgage the suit property and got prepared forged documents qua succession of his father in his name alone. Subsequently, he got the suit property transferred in favour of his wife (defendant No.2) for a consideration of Rs.69,000/- which too was never paid.

In a separate written statement filed by defendant No.2, she set up a plea of being a bonafide purchaser for consideration and prayed for dismissal of the suit.

Upon consideration of the matter, the trial Court vide judgment and decree dated 21.11.2014 dismissed the suit.

However, in an appeal preferred by the plaintiff-appellant, the appellate Court, upon due and comprehensive analysis of the matter in issue

and the evidence on record, concluded that apparently defendant No.1 claimed himself to be the sole surviving heir of late Ishwar Saini while selling the shop in question to defendant No.2 vide sale deed dated 13.02.2007. Evidence on record showed that defendant No.2 was delivered the actual physical possession of the shop on the date of execution of the sale deed itself. Significantly, in July, 2012, i.e. after five years of execution of the sale deed dated 13.02.2007, the plaintiff alleged to have acquired knowledge of the said transaction and she filed the present suit on 03.08.2012. As plaintiff never remained in physical possession of the shop in question, post death of his father and even in the present suit she merely prayed for a declaration and did not claim possession, she at best was entitled to half share in the sale consideration received by defendant No.1. Further, defendant No.1 suppressed the fact regarding other surviving heirs of late Ishwar Saini while executing the sale deed. For defendant No.2 made due and necessary inquiries qua the ownership of the suit property and as name of defendant No.1 was incorporated even in the Municipal records, she vide sale deed dated 13.02.2007 purchased the same for a valuable consideration. Thus, she was a bonafide purchaser. If indeed the plaintiff was defrauded by her real brother, she could always lodge a criminal prosecution against him. Even otherwise, one wonders as to how, post death of Ishwar Singh on 24.03.2002 till the sale deed dated 13.02.2007 was executed, and for five years till the present suit was filed on 03.08.2012, what stopped the plaintiff to claim her share in the estate of his deceased father. Thus, plaintiff was only entitled to recover $\frac{1}{2}$ share out of the sale consideration against her brother (defendant No.1).

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

04.10.2019
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO