

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 4082 of 2018 (O&M)
Date of decision: 28.11.2019

Om Parkash and others

...Appellants

V/s.

Jagdish and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. M.K. Garg, Advocate
for the appellants.

RITU BAHRI, J. (Oral).

The appellants/plaintiffs have come up in appeal against the judgment of the trial Court dated 30.07.2014 and the judgment dated 18.12.2017 of the lower appellate Court whereby suit filed by the plaintiffs for declaration that plaintiffs and proforma defendant are joint owners in possession of the suit land as per the judgment dated 29.12.1978 passed by the Court of Sh. V.P.Chaudhary, the then Sub Judge First Class, Safidon and various sale deeds and their mutations executed thereafter are illegal, null and void and without any consideration, has been dismissed by both the Courts.

The admitted case between the parties is that on the basis of family settlement, consent decree was passed in a suit for declaration filed by the plaintiffs against their father (defendant No.1) by the then Sub Judge, 1st Class, Safidon in a civil suit No. 379 on 29.12.1978 (Ex.P1). As per the above said decree, defendant No. 1 i.e. the father of the plaintiffs and

proforma defendant gave the suit land to the plaintiffs and proforma defendant. Thereafter mutation No. 1617 of the suit land was also sanctioned in favour of the plaintiffs and proforma defendant on 10.03.1979.

The grievance of the appellants/plaintiffs was that in violation of the judgment and decree dated 29.12.1978 (Ex.P1), defendant No. 1 executed several sale deeds (Ex.P6 to P13) in favour of defendants No. 2 to 10. The sale deeds were void keeping in view above said decree dated 29.12.1978 (Ex.P1).

The suit of the plaintiffs has been dismissed by observing that compromise/consent decree has to be distinguished from the Court decree passed on merit. A compromise decree is not a decision of the Court. It is the acceptance by the Court of something to which the parties have agreed. The compromise decree merely sets the seal of the Court, on the agreement of the parties. The Court does not decide anything. Nor can it be said that a decision of the Court is implicit in it. In a consent decree, it cannot be said that the suit is heard and finally decided by the Court on merits. This view was expressed in *Sukha Singh V/s. Jasvinder Singh, (P&H)* 2001 (4) R.C.R. (Civil) 689. After the consent decree was passed on 29.12.1978 (Ex.P1), father of the plaintiffs i.e. defendant No. 1 sold the suit land vide registered sale deeds No.622 dated 16.07.1979, No.170 dated 09.06.1983, No.524 dated 27.03.1997, No.145 dated 2.6.1989, No.290 dated 31.07.1989, No.173 dated 30.05.2001, No.1131 dated 23.01.2003 and No.366 dated 1.6.2007 (Ex.P6 to P13) respectively in favour of defendants No. 2 to 10 for a valuable sale consideration and mutation No.1617,

No.1751, No. 1838, No.2781, No.2877, No.2908, No.3052 No.3217 and No.3559 (Ex.P-30 to Ex.P-38) were also got sanctioned without any objection from any quarter. Both the Courts have further observed that plaintiffs themselves were attesting witnesses of impugned sale deeds. Sale deeds (Ex.P6 to Ex.P9 and Ex.P11) were duly witnessed by one of the sons of defendant No.1 i.e. Maman, whom plaintiffs intentionally impleaded as proforma defendant No.11. Hence the plaintiffs had due knowledge of execution of all the sale deeds right from the beginning and the civil suit was filed beyond a period of 3 years challenging the above said sale deeds. Moreover all the sale deeds were registered documents and hence it was a notice to all and the plaintiffs filed a suit challenging the legality of said sale deeds on 14.06.2008 i.e. after expiry of three years of limitation. Keeping in view the judgment passed by Supreme Court in ***Ramti Devi Vs. Union of India, (SC)*** 1995(1)LJR 270, the Courts held that until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties and the suit has to be filed within three years from the date when the cause of action had occurred. The Courts further proceeded to examine Section 41 of the Transfer of Property Act. Defendants No. 2 to 10/transferees had taken reasonable care to ascertain that the transferor had the power to make the transfer and had acted in good faith. Defendants No. 2 to 10 were not expected to have knowledge of the decree dated 29.12.1978 (Ex.P1). Defendants No. 2 to 10 were able to establish that the defendant No. 1 was the ostensible owner of the property and they had purchased it for a valuable sale consideration taking reasonable care that the transferor/defendant No. 1 had power to

make the transfer. Hence the action of the transferee was on good faith. Defendants No. 2 to 10 were held to be bonafide purchasers keeping in view judgment passed by this Court in *Jagan Nath and others V/s. Raj Kumar and others*, 1988 (2) RRR (P&H), Full Bench judgment of the Lahore High Court passed in *Shamsher Chand V/s. Bakhshi Mehar Chand and others*, 1947 P.L.R. 274 and Division Bench judgment passed in *Shrimati Asharfi Devi V/s. Trilok Chand and others*, 1964 P.L.R. 1130.

After going through the detailed judgments passed by both the Courts below, no case for interference is made out in the concurrent findings recorded by both the Courts.

Appeal is dismissed.

Pending application also stands disposed of.

(RITU BAHRI)
JUDGE

28.11.2019
Divyanshi

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