

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.6549 of 2018 (O&M)

Date of decision: 18.03.2019

Major Singh etc.

..... Appellants

Versus

Pritam Kaur etc.

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ravish Bansal, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants No.1 to 4-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below decreeing the suit filed by the plaintiff-respondent for declaration and permanent injunction.

Competing interest of a bona fide purchaser through two registered sale deeds and defendants No.1 to 4 require adjudication. Defendants No.1 to 6 are undisputedly members of a family-successors of Natha Singh son of Harnam Singh. As per revenue record, Sadhu Singh and Guddi Kaur @ Amarjit Kaur were recorded as owners of the property. The plaintiff purchased the property measuring 21 kanals 5 marlas from Guddi Kaur-defendant No.6 vide registered sale deed dated 05.08.2009 and also purchased the land measuring 18 kanals 12 marlas from defendant No.5 again through registered sale deed. The plaintiff filed this suit claiming that she is bona fide purchaser without notice and owner in possession.

Defendants No.5 and 6 admitted the claim of the plaintiff whereas defendants

No.1 to 4 claim that they are in fact owners in possession in view of a compromise decree dated 31.01.1998. Both the Courts on appreciation of evidence have found that the plaintiff is a bona fide purchaser and hence, owner in possession.

Learned counsel appearing for the appellants has submitted that as per judgment and decree dated 31.01.1998 which was passed on the basis of compromise, defendants No.1 to 4-appellants were acknowledged to be owners of the property. He has submitted that no doubt as per the judgment and decree dated 31.01.1998, the revenue record was not got updated and corrected by getting the name of defendants No.5 and 6 deleted therefrom, however, still defendants No.5 and 6 could not transfer better title than what they themselves had. Hence, he submitted that Section 41 of the Transfer of Property Act would not come to rescue the plaintiff.

As noted above, the dispute which needs consideration is whether in the facts of the case, the Court should apply the principle of bona fide purchaser as provided in Section 41 of the Transfer of Property Act or that no one can transfer better title than what he himself has.

Keeping in view the undisputed relationship between defendants No.5 and 6 who are vendors with defendants No.1 to 4 as also the fact that defendants No.1 to 4 did not get the revenue record updated, it is undisputed that the plaintiff is not at fault. There is no allegation that the plaintiff is anywhere related to defendants No.5 and 6-vendors.

Learned counsel appearing for the appellants has submitted that there is no evidence of delivery of possession. He has further submitted that the payment of the sale consideration is not before the Sub-Registrar and therefore, the plaintiff is not proved to be bona fide purchaser.

This Court has analyzed the arguments of learned counsel and

with his able assistance gone through the judgments passed by the Courts below.

As regard argument of learned counsel with regard to delivery of possession, it will be noted that the plaintiff has claimed that she is owner in possession of the property. In both the sale deeds, the delivery of possession is specifically recorded. There was no issue with regard to ownership of the plaintiff. In absence thereof, both the Courts have not gone into the aforesaid issue. In regular second appeal, defendants-appellants cannot be permitted to raise an argument which is based upon evidence.

As regard second argument of learned counsel that no payment of the sale consideration was paid before the Sub-Registrar, it will be noted that the payment of sale consideration is acknowledged and admitted by defendants No.5 and 6. Defendants No.5 and 6 even in this suit are not disputing that fact. In such circumstances, defendants No.1 to 4 who are not vendors of the sale deed cannot be permitted to allege that the sale is without consideration particularly when defendants No.5 and 6 even in this litigation admit payment of consideration.

In view thereof, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

18.03.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No