

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

RSA No. 521 of 2018(O&M)

Date of decision: 20.1.2020

Des RajAppellant

VERSUS

Swaran Singh since deceased through LRs and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Anil Kumar Garg, Advocate for the appellant.

REKHA MITTAL, J.

CM No.1269-C of 2018

Prayer in this application is for impleading legal representatives (in short 'LRs') of Swaran Singh – respondent No.1 (since deceased).

In view of averments made in the application supported by an affidavit of Des Raj, the appellant, the application is allowed and persons mentioned in para 2 of the application are allowed to be impleaded as LRs of deceased Swaran Singh – respondent No.1 subject to just exceptions and for the purpose of present lis.

Disposed of accordingly.

RSA No.521 of 2018

Challenge in the present appeal has been directed against decree and judgment dated 02.12.2016 passed by the Additional District Judge, Ludhiana whereby appeal against the judgment and decree dated 07.07.2015 passed by the trial Court, filed by defendants No.2 and 3 was

accepted and appellants/defendants No.2 and 3 were declared to be bona fide purchasers for consideration of land measuring 38 kanals including land measuring 8 kanal 15 marlas, subject matter of agreement to sell dated 18.07.2005 marked as Ex.P1, propounded by the appellant/plaintiff.

The appellant/plaintiff staked his claim to suit land measuring 8 kanal 15 marlas detailed in headnote of the plaint situated in revenue estate of village Uksi, Tehsil Payal, District Ludhiana on the basis of agreement to sell dated 18.07.2005 purported to be executed by respondent No.1 with the allegations that sale deed dated 27.07.2005 executed by defendant No.1 in favour of defendants No.2 and 3 is illegal, collusive, null and void and is not binding upon right of plaintiff/appellant. He also prayed for alternative relief of recovery of Rs.3 lakhs i.e.Rs.1,50,000/- as earnest money and Rs.1,50,000/- as damages.

The trial Court framed issue No.9, reads thus:-

“Whether defendants No.2 and 3 are bonafide purchasers for consideration and without notice? OPD”

The trial Court in view of findings recorded in para 23 of the judgment, negated plea of defendants No.2 and 3 and determined the aforesaid issue in favour of appellant/plaintiff. However, the Appellate Court reversed findings of the trial Court on issue No.9 on the basis of findings recorded in paras 13 and 14 of the judgment. The Appellate Court granted relief of recovery of Rs.1,50,000/- along with interest in favour of the appellant and against defendant No.1 Swaran Singh.

Counsel for the appellant would argue that defendant No.1 executed agreement to sell dated 18.07.2005 in favour of the plaintiff but within a short span of less than 10 days, sale deed dated 27.07.2005 was

executed in favour of defendants No.2 and 3, sufficient to prove that defendants connived with each other and in a haste executed the sale deed in order to deprive the appellant/plaintiff of his right to become owner of property measuring 8 kanal 15 marlas, subject matter of the agreement. It is further argued that as per sale deed dated 27.07.2005, land measuring 38 kanals was sold for sale consideration of Rs.14.25 lakhs. Defendants No.2 and 3 examined Balraj, Manager, Agricultural Cooperative Bank Ltd. Maloud DW-3 to prove vouchers Ex.D3 to D5 but the same were not signed by Bhupinder Sharma, Manager in his presence. It is further argued that statement of Balraj cannot be considered sufficient to prove that payment through vouchers Ex.D3 to D5 was actually made by Harwinder Singh – defendant No.2. It is further argued that statement of Harwinder Singh DW-4 cannot be taken on its face value to sustain findings of the Appellate Court that defendants No.2 and 3 are bona fide purchasers and entitle to protection under Section 41 of the Transfer of Property Act, 1882.

I have heard counsel for the appellant, perused the paper-book and copies of documents particularly statements of witnesses examined by defendants No.2 and 3 to establish their plea of bona fide purchasers, supplied during the course of hearing.

The question for consideration is, whether findings of the Appellate Court on the question of defendants No.2 and 3 being bona fide purchasers of suit land plus other land measuring 29 kanal 5 marlas suffer from perversity or otherwise.

The subsequent purchasers examined various witnesses to prove the sale deed dated 27.07.2005 executed by Swaran Singh –

defendant No.1 along with Satwinder Singh and Kulwinder Singh in respect of land measuring 38 kanals including the suit land. There is nothing on record suggestive of the fact that defendants No.2 and 3 had any relationship with Swaran Singh and others. Similarly, there is nothing on record to prove that Satwinder Singh and Kulwinder Singh, co-vendors of Swaran Singh – defendant No.1 ever challenged sale deed dated 27.07.2005 Ex.D1 on any ground whatever. There is no evidence to show that defendants No.2 and 3 colluded with their vendors to get the sale deed executed at the cost of depriving owners of land measuring 38 kanals of their title to the said land.

Harwinder Singh appeared in the witness box to establish his case. Counsel for the appellant has read his cross examination in extenso but failed to point out if he ever had knowledge of the agreement dated 18.07.2005 propounded by him. There is no evidence in affirmative or rebuttal led by the appellant to establish that defendants No.2 and 3 had knowledge of agreement dated 18.07.2005 before sale deed dated 27.07.2005 was executed in their favour. It is not the case that an entry was made in the revenue records in respect of agreement in question. Under these circumstances, it is difficult to accept contention of the appellant that defendants No.2 and 3 had knowledge of agreement to sell dated 18.07.2005.

The total sale consideration in respect of land measuring 38 kanals was Rs.14.25 lakhs. Defendants No.2 and 3 examined Balraj DW-3 to prove that more than Rs.10 lakhs was deposited by Harwinder Singh in Agricultural Cooperative Bank Ltd. Maloud on 27.07.2005 as there was an outstanding loan qua land subject matter of the sale deed. Balraj made his

statement on the basis of records maintained in the aforesaid bank. The bank also issued certificates Ex.D6 to D8 with regard to payment of outstanding loan. The mere fact that vouchers were signed by Sh. Bhupinder Sharma, the then Manager of the aforesaid Bank or the same were not signed in the presence of Balraj is not a circumstance to reject testimony of Balraj or documents produced by him. How can a Cooperative Bank manufacture the documents to show that outstanding balance in a loan account stood paid if it is not actually done. The payment of sale consideration of more than Rs.10 lakhs has been proved by way of documentary evidence on the basis of vouchers Ex.D3 to D5. As has been noticed hereinbefore, it is not only the suit land but additional land measuring 29 kanal 5 marlas was also sold through sale deed Ex.D1 executed by defendant Swaran Singh and his co-vendors. Since co-vendors of Swaran Singh never raised an issue with regard to non-receipt of sale consideration, the Appellate Court has rightly held that sale deed Ex.D1 was executed for a valuable consideration. In this view of the matter, I find myself unable to accept contention of the appellant that findings of the Appellate Court on the aforesaid aspect of the matter suffer from an error much less perversity, warranting intervention.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

JANUARY 20, 2020

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no