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

136 **RSA-874-2022(O & M)**
**Date of Decision : 26.04.2022**

Jagmal and others ....Appellants

V/S

Suresh Kumar and others ...Respondents

**CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present : Mr.J.S.Saneta, Advocate
for the appellants

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**ANIL KSHETARPAL, J (ORAL)**

While assailing the correctness of findings of facts arrived at by the first Appellate Court, defendants Nos.8 to 11 have filed this appeal.

Shri Chand along with his two daughters namely Malkhani and Gultani was owner of the property in dispute. Shri Chand for himself as well as attorney for his two daughters executed a sale deed in favour of the plaintiff. Unfortunately, the revenue authorities did not make an entry in the revenue record. After the death of Shri Chand, the property was entered in favour of his heirs, who, in turn sold the property to defendants Nos. 8 to 11 vide a sale deed dated 06.05.2005.

The plaintiff filed a suit for grant of decree of declaration that he is an owner in possession of the suit property. Defendants No.1 to 5 claim that Shri Chand never executed the sale deed. Defendants No.8 to 12 claim that they are bona fide purchasers. The trial Court dismissed the suit being time barred as the suit was filed after a period of three years from the sale deed dated 06.05.2005.

The first Appellate Court has reversed the judgment and decree passed by the trial Court.

Heard the learned counsel representing the appellants at length and with his able assistance perused the judgments passed by the courts below.

The plaintiff while filing the suit has claimed that he came to know of the revenue entry recently. He filed a suit claiming that he is an owner in possession. The ownership of the property is transferred by a registered instrument. In the present case, the ownership was transferred in favour of the plaintiff vide a sale deed dated 24.12.1996. Thereafter, neither Shri Chand nor Malkani and Gultani had any right, title or interest in the property. Consequently, the other legal heirs of Shri Chand never became owners of the suit property. An entry in the revenue record is for an administrative purpose and it neither gives rise to any cause of action nor it determines the rights of the parties. In such circumstances, the first Appellate Court has correctly held that the suit filed by the plaintiff based on title is within limitation.

As regards the plea of the appellants that they are bona fide purchasers for a valuable consideration, it may be noted that defendants No.1 to 5 (legal heirs of Shri Chand) had no right, title or interest in the property. They could not transfer better title than what they possessed. The plea of bona fide purchaser is based on Section 41 of the Transfer of Property Act, 1882(hereinafter referred to as "the 1882 Act"). One of the requisites for proving the plea of bonafide purchaser is to prove that the actual owner impliedly or expressly admitted the ostensible owner to be the actual owner. For proving the plea of a bonafide purchaser, the Supreme Court in ***Hardev Singh vs. Gurmail Singh (Dead) by Lrs.(2007) 2 SCC 404,*** after discussing Section 41 of the 1882 Act, has held that before some one can be declared to be a bona fide purchaser, he is required to clear the following four tests:

(i) the vendor should be an ostensible owner;

(ii) the sale is for a valuable consideration;

(iii) the owner, by express or implied consent, has projected the ostensible owner to be the real owner;

(iv) the transferee has taken a reasonable care to ascertain the title of his vendor.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

**26.04.2022** **(ANIL KSHETARPAL)**
*neenu* **JUDGE**

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