

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-1057-1989 (O&M)

Date of decision dated 23.11.2022

Ram Kaur

.....Appellant

vs.

Mohinder Singh & Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Jasbir Rattan, Advocate, and
Mr. Manu Rattan, Advocate, for the appellant.

Mr. M. K.Dogra, Advocate, for respondent No.3.

HARKESH MANUJA, J (Oral)

By way of present appeal challenge has been made to the judgment and decree dated 02.12.1988 passed by the first appellate Court, Faridkot, reversing the judgment and decree dated 28.11.1985 passed by the Court of learned Sub Judge Ist Class, Moga.

Brief facts of the case are that the appellant/plaintiff filed a suit for declaration, claiming herself to be owner in possession of the suit land measuring 13 Kanal, 19 Marlas being 1/4th share of 55 Kanal and 17 marlas of land. In the alternate, she also prayed for possession. As per plaint, the appellant/plaintiff purchased the suit property vide registered sale deed dated 20.03.1967 from its original owner namely Mohinder Singh-respondent No.1. It was also alleged that even prior to the purchase of suit land, the appellant/plaintiff was already a co-sharer in the joint holding. The appellant/plaintiff further pleaded that taking

benefit of the fact that no mutation was got entered by her on the basis of sale deed dated 20.03.1967, Mohinder Singh sold the same in favour of respondent No.2/defendant No.2 vide sale deed dated 08.05.1974 who in turn further sold it to respondent No.3/defendant No.3 i.e. Labh Singh vide registered sale deed dated 05.08.1979. The appellant/plaintiff further claimed that based on their sale deeds, the respondents were asserting their title over the suit land which compelled her to file the present suit.

Upon notice, respondent No.1 did not choose to appear and was thus, proceeded against ex-parte. The suit was primarily contested by respondent No.3-Labh Singh, raising the plea of *bona fide* purchaser besides alleging the suit to be barred by limitation. Initially, the suit was decreed ex-parte in favour of appellant/plaintiff by the trial Court vide judgment and decree dated 23.08.1993, however, the same was set aside in appeal and matter was remanded back before the trial Court at the instance of respondent No.3-Labh Singh.

After remand, the trial Court vide its judgment and decree dated 28.11.1985 decreed the suit, rejecting the plea of bona fide purchaser as claimed/raised at the instance of respondent No.3-Labh Singh. Aggrieved against the aforesaid, respondent No.3 filed first appeal which was allowed by the Court of learned Additional District Judge, Faridkot, vide its judgment and decree dated 02.12.1988 by recording reasons that the suit filed at the instance of appellant/plaintiff was barred by limitation and further that the sale deed Ex.P-1 dated 20.03.1967

executed in favour of appellant-plaintiff was in fact a paper transaction being under valued.

Challenging the judgment and decree dated 02.12.1988 passed by the learned first Appellate Court, it has been contended on behalf of the appellant that the suit for declaration claiming ownership based on title through registered sale deed dated 20.03.1967 could not have been held to be barred by limitation, particularly in view of the fact that dehors the sale deed dated 20.03.1967, the appellant already happened to be co-sharer in the joint holding along with her vendor Mohinder Singh. He also submitted that at best respondent No.3 Labh Singh could have raised the plea of having become owner by way of adverse possession which though was pleaded but not proved on record at his instance and as such, the Appellate Court went wrong while allowing the appeal.

On the other hand, learned counsel for respondent No.3-defendant No.3 submits that having purchased the suit property vide registered sale deed dated 20.03.1967, no mutation was ever got entered in her name by the appellant/plaintiff and accordingly the suit land was purchased by respondent No.3/defendant No.3 after having done due verification about the title of the suit land being vested in his predecessor i.e. Guljar Singh and Mohinder Singh as recorded in the revenue documents, and accordingly, respondent No.3/defendant No.3 should have been declared to be a *bona fide* purchaser.

In view of the pleadings, the evidence and the submissions made on behalf of both the sides, the following law points need to be considered & answered in the present appeal:

1. Whether a suit for declaration based on ownership through registered sale deed can be held to be barred by limitation in the absence of other side having been able to establish adverse possession. ?
2. Whether for the purpose of deciding plea of *bona fide* purchaser, registered sale deed itself can be said to be notice to all.?

I have heard learned counsel for the parties and have gone through the paper book and records of the case. I find substance in the arguments raised on behalf of appellant/plaintiff.

In the facts and circumstances of the present case, the first Appellate Court fell into an error while allowing the appeal there by resulting into dismissal of suit for declaration of ownership filed at the instance of appellant/plaintiff on the ground of being barred by limitation. In fact, when the suit is for declaration of ownership no limitation for the same has been prescribed and the plaintiff cannot be non-suited unless the contested party proves and is able to establish title by way of prescription/adverse possession which, respondent No.3 failed to prove in this case. I even derive my aforesaid view from the judgment passed by Hon'ble the Supreme Court in the case of **Md. Mohammad Ali (Dead) by LRs Vs. Sri Jagdish Kalita** reported as 2004(1) RCR 682 and judgment passed by this Court in case of **Darshan Singh Vs. Kashmir Singh** reported as 2016 (4) PLR-194 relevant paras 19 & 23

respectively from the aforementioned two judgments are reproduced hereunder for reference.

**“Md. Mohammad Ali (Dead) by LRs Vs. Sri Jagdish Kalita”
2004(1) RCR 682”**

“19. By reason of Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Art.65 the 1963 Limitation Act,, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act,, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiff's claim to establish his title by adverse possession.

Darshan Singh Vs. Kashmir Singh”2016 (4) PLR-194

23. I do not find any substance in the plea raised by learned counsel for the appellant that the suit filed by the plaintiff was barred by limitation. Article 65 of the Limitation Act, 1963 reads as under:-

Description of period	Period of limitation	Time from which begins to run
65.For possession of immovable property or any interest therein based on title	Twelve years	When the defendant becomes adverse to the plaintiff.

The limitation for filing the suit for possession on the basis of title is 12 years when the possession of defendant becomes adverse. If the defendant fails to prove the plea of adverse possession, the suit for possession filed on the basis of title cannot be stated to be barred by limitation.

The Hon’ble Apex Court in case of **Indira v. Arumugam, 1999(1) RCR (Civil) 609** has laid down as under:

“It is, therefore, obvious that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendant proves adverse

possession for the prescriptive period, the plaintiff cannot be non-suited.”

In addition, the findings recorded by the first Appellate Court while recording the sale deed dated 20.03.1967 i.e.Ex.P-1 to be a paper transaction for want of lesser amount of sale consideration is also against record. The sale deed dated 20.03.1967 i.e. Ex.P-1 pertaining to 13 Kanal and 19 Marlas of land was executed in favour of appellant for a sale consideration of Rs.4500/- whereas, the sale deed dated 15.06.1979 relied upon by respondent No.3/defendant No.3 Labh Singh vide which he purchased the suit land records sale consideration as Rs.11,000/-, thus, the sale deed relied upon by the appellant could not have been discarded by the first Appellate Court to be a paper transaction merely by recording that the sale price at the time of purchase by appellant/plaintiff in the year 1967 was Rs.20,000/- & that too based on some oral deposition made by one of the witnesses which was not even supported by any documentary evidence in this regard.

In the facts and circumstances of the present case, I am even unable to accept the submissions made on behalf of respondent No.3/defendant No.3 claiming himself to be *bona fide* purchaser for valuable consideration, by relying upon verification done at his instance regarding the revenue records of the land in question being in the name of his vendors. In the present case, the appellant/plaintiff purchased the suit property vide sale deed dated 20.03.1967, the same being registered document has to be treated as notice to all and respondent No.3 cannot be permitted to display ignorance to the same. Still further, from the memo

of parties to the, suit one can find out that all the parties belong to the same village i.e. Village Rode, Tehsil Moga thereby raising a strong presumption against respondent No.3 as regards knowledge about purchase of suit property, by appellant and as such, the plea of *bona fide* purchaser cannot be recorded in his favour for want of lack of exercise of reasonable care. In this regard, I even find support from a judgment passed by Division Bench of this Court in case titled as **Mohinder Singh (died) through his LRs vs. Banta Singh and others, 2013(1) R.C.R (Civil) 68**. Paras No.12 to 15 of the said judgment are reproduced hereunder for the reference:-

“12. Indisputably, the parties to the lis belong to the same village. Plaintiff Mohinder Singh is none-else than the son of Nihal Singh s/o Hira Singh and as a matter of fact, nephew of Bhajan Singh, Nand Singh and Munna @ Nand Kaur, who have sold the entire share of Wazira Singh, on 30.7.1984, to Baljit Singh, Ran Singh and Balwinder Singh, after his death on 4.2.1984. The Lower Appellate Court has also accepted the genuineness of sale deed Ex.P1 dated 21.6.1965 executed by Wazira Singh in favour of Mohinder Singh of the land measuring 57 kanals 7 marlas out of total half share of 97 kanals 10 marlas. It is, therefore, apparent that on 30.7.1984, when the sale deed Ex.D1 was executed, the heirs of Wazira Singh were having no transferable rights in the land measuring 57 kanals 7 marlas, which had already been transferred by their father, for a valuable consideration, to Mohinder Singh. In this regard, the Supreme Court in the case of Alta Sidda Reddy (Supra) has held that if there are two sale-deeds, then the sale deed prior in time shall prevail and at the time of execution of second sale deed, the vendor would not have any right or title in the property which can clothe the subsequent purchaser with any right or title as no one can transfer a better title than he possess. In view thereof, the first question which has been raised by counsel for the appellant is decided in his favour.

13. In respect of the second question of the bona fide purchaser, it would be relevant to refer to Section 41 of the 1882 Act, which is reproduced as under:

“Transfer by ostensible owner:

Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it:

PROVIDED that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

14. According to the aforesaid provision, a person would be ostensible owner if he had express or implied consent of the persons interested in immovable property and such transfer shall not be held to be voidable on the ground that the transferor had no authority to make it provided that the transferee had taken due care and acted in good faith while ascertaining the power of the transferor to transfer the said property.

15. In this regard, it has been held in the case of Amrik Singh (Supra) that it is not suffice for the purchaser to inspect the revenue record but he is also suppose to enquire from the locality about the title of the vendor. It was observed that subsequent vendee is a resident of the same village and such transaction of sale are generally known to the inhabitants of the village. In this regard, reference has been made to the decision of the Supreme Court in the case of **“Dr. Govinddas and another Vs. Shrimati Shantibai and others” 1972 PLR 227.**”

More than that, it is the basic principle of law relating to transfer of property that “no one can confer a better titled what he himself has”. Therefore, respondent No.3 could not have derived valid title to the suit property as his vendor himself did not have any to convey.

Accordingly, the law points arising from the facts and circumstances of

the present appeal as framed in the preceding part of this judgment are answered in the aforesaid manner, resultantly, the appeal in hand is allowed, the judgment and decree dated 02.12.1988 passed by the Additional District Judge, Faridkot, is hereby set aside thereby restoring the Judgment and decree dated 28.11.1985 passed in favour of appellant/plaintiff by the Court of the then learned Sub Judge 1st Class, Moga.

Pending applications, if any, are disposed of accordingly.

23.11.2022
anil

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>