

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

**RSA-1509-2020 (O&M)
Decided on:-23.11.2022**

Pardeep

....Appellant

vs.

Naresh and others

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. K.P. Singh, Advocate,
for the appellant.

HARKESH MANUJA J. (Oral)
CM-4532-C-2020

Prayer in this application is for condonation of delay of 1113 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application which is duly supported by an affidavit, sufficient cause has been made out for condoning the delay in re-filing and, as such, the application is allowed and delay of 1113 days in re-filing the appeal is condoned.

Main case

By way of present appeal, challenge has been made at the instance of appellant/plaintiff to the judgments and decrees dated 11.10.2012 and 21.09.2016 passed by the courts below, whereby, a suit for declaration, filed at his instance, challenging the sale deed dated 10.02.2006 executed by respondent No.1 in favour of respondent No.2 as well as the sale deed dated 25.05.2006, executed by respondent No.2 in favour of

respondents No.3 and 4, has been dismissed.

2. Brief facts of the case are that the appellant-plaintiff filed a suit for declaration qua the land in question claiming ownership & possession in his favour, based on the averments that by virtue of consent decree dated 02.10.1996 passed in Civil Suit titled as "*Pardeep Vs. Naresh*", the same was transferred in his name. It was further pleaded that despite the ownership and possession of land in favour of appellant-plaintiff, respondent No.1-defendant No.1 (herein after referred to as defendant No.1) illegally executed sale deed dated 10.02.2006 in favour of defendant No.2, who in turn wrongly transferred the same in favour of defendants No.3 and 4 through sale deed dated 25.05.2006.

3. Upon notice, defendant No.1 chose not to appear and was thus, proceeded against ex-parte. Defendant No.2 as well as defendants No.3 and 4 filed their separate sets of written statement, disputing the claim set up by the appellant-plaintiff. In short, it was pleaded that the answering defendants were bonafide purchasers for valuable consideration having purchased the suit property after looking into the record pertaining to the ownership in the name of defendant No.1 and thus, he being the ostensible owner and they were even handed over possession of the suit property as well. Based on the respective pleadings, the trial court vide its order dated 20.12.2006, formulated the following issues:-

(1) Whether the plaintiff is owner in possession to the extent of 1/18 share of land detailed in para No.1 of the plaint on the basis of judgment and decree dated 02.10.1996 passed in civil suit No.810 of 1996 titled as Pardeep vs. Naresh? OPP

(2) Whether the sale deed dated 10.02.2006

executed by defendant No.1 in favour of defendant No.2 and mutation No.1623 dated 17.02.2006 are illegal, null and void and not binding upon the rights of the plaintiff? OPD

(3) Whether the defendant No.2 is bonafide purchasers of the suit land? OPD

(4) Whether the plaintiff and defendant No.1 filed the suit in collusion with each other? OPD

(5) Whether the suit of the plaintiff is bad for non joinder of necessary parties? OPD

(6) Relief.”

4. Considering the evidence led by the parties, the trial court vide its judgment and decree dated 11.10.2012, dismissed the suit by recording the findings that defendants No.2 to 4 were bonafide purchasers for valuable consideration, having purchased the suit property on due verification of the revenue record pertaining to the ownership and possession of defendant No.1. It was further recorded that the decree dated 02.10.1996 was a result of collusion between the plaintiff and defendant No.1.

5. The appellant-plaintiff challenged the aforesaid judgment and decree dated 11.10.2012, passed by the learned trial court, by way of filing first appeal, however, the same was dismissed by the court of learned Additional District Judge, Jhajjar, vide its judgment and decree dated 21.09.2016. Besides recording finding as regards defendants No.2 to 4 being bonafide purchaser, learned first Appellate Court also recorded that in fact, the judgment and decree dated 02.10.1996 was never acted upon between the appellant and defendant No.1.

6. By way of present appeal, the judgments and decrees passed by both the courts below have been impugned herein.

7. Learned counsel for the appellant submits that the courts below,

in a suit for declaration, could not have ignored or set aside the judgment and decree dated 02.10.1996 suffered in favour of the appellant, at the instance of defendant No.1 and that too, without there being any counter claim made in this regard. Learned counsel for the appellant further submits that in this situation, instead of having recorded finding of bonafide purchasers in favour of defendants No.2 to 4, the courts below at best could have granted decree for refund of sale consideration.

8. I have heard learned counsel for the appellant and gone through the record. I am unable to accept the submissions made on behalf of the appellant.

9. It is correct that in the present litigation it is the appellant-plaintiff, who approached the court seeking declaration as regards sale deeds dated 10.02.2006 and 25.05.2006, however, once, the relief in the suit claiming ownership was entirely based on the decree dated 02.10.1996, the courts below committed no error of law while adjudicating upon the effect of the said decree dated 02.10.1996, so as to find out, as to whether it was ever to be acted upon between the appellant and defendant No.1.

10. Having appreciated the evidence available on record as regards the pleadings of the parties and the statement made by PW-1, I find no illegality and infirmity in the judgments and decrees passed by both the courts below to the effect that decree dated 02.10.1996 was never to be acted upon between the parties, particularly, when the possession was not transferred under it and even no mutation was got sanctioned based on the same in favour of the appellant for almost twenty years, resulting into continuation of the entries regarding ownership and possession in favour of defendant No.1 through out. I even derive support from the judgment passed

by this Court in case of "M/s Harbanspura Iron and Steel Industries vs. Amar Nath and others", reported as 2016(2) L.A.R. page 84, relevant portion from paragraphs 9 and 10 is reproduced hereunder for reference:-

"9. The defendant Nos.2 and 3 are bona fide purchaser for a valuable consideration, for, the revenue record showed the ownership in the name of Amar Nath who sold it to defendant Nos.2 and 3 vide registered sale deed dated 31.03.1995.

10. The principle of "Buyer beware" has been duly complied with, therefore, rightly so the courts below have granted the benefit of provisions of Section 41 of the Transfer of Property Act, 1882. The plaintiff did not disclose passing of the decree to the revenue authorities. In the absence of same, cannot challenge the sale deed after 20 years of passing of decree....."

11. As regards the other submission, at the instance of the appellant to the effect that refund could have been ordered in favour of respondents No.3 and 4, again the same is devoid of merits. In the present case, respondents No.2 to 4 were found to be bonafide purchasers for valuable consideration having purchased the suit property from the ostensible owner i.e. respondent No.1 on having verified the records pertaining to his ownership and possession coupled with the fact that the consent decree dated 02.10.1996 was never acted upon between the appellant and defendant No.1. In fact, respondents No.2 to 4 acted in good faith taking reasonable care to ascertain that the transferor had the power to transfer and the appellant was not able to point out any circumstance which should have led respondents No.2 to 4 to go behind the revenue record and make further enquiry, no fault can be found with the findings recorded in their favour on the point of they being the bona fide purchaser.

12. Thus, finding no substantial question of law involved in the present appeal and for the reasons recorded herein above, I do not find any merit in the present appeal and the same is accordingly, dismissed.

13. However, in case, the appellant wishes to pursue his legal remedies against respondent No.1, he shall be at liberty to do so.

23.11.2022
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(HARKESH MANUJA)
JUDGE

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