

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1208 of 2022 (O&M)

Shri Balihar Singh

... Appellant(s)

Versus

Shri Harish Malik (Since Deceased) Through his Legal Heirs and Another

... Respondent(s)

AND

2. Regular Second Appeal No. 1209 of 2022 (O&M)

Shri Balihar Singh

... Appellant(s)

Versus

Shri Harish Malik (Since Deceased) Through his Legal Heirs and Another

... Respondent(s)

DATE OF DECISION: 02.06.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Abhinav Gupta, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. While assailing the concurrent judgments, passed by both the Courts below, arising from a common suit, two connected regular second appeals, filed by the defendant No.2, shall stand disposed of.

2. The plaintiff filed a suit for grant of decree of declaration to the

effect that he is owner of the land measuring 2 kanals and 9 marlas on the basis of sale deed dated 29.06.1982 and the defendants have no right, title or interest in the same. In the alternative, a decree for possession as well as permanent injunction was also sought. Only defendant No.2 contested the suit as defendant No.1 was proceeded against *ex parte*. It was asserted that in fact, the plaintiff had exchanged the property with one Gurmukh Singh, who, thereafter, sold the property to Satnam Singh, who further sold it to Balihar Singh, defendant No.1 (appellant herein). Both the Courts below, on appreciation of evidence, have found that the defendant No.2 has failed to prove exchange of the property. In fact, it has come on record that the alleged Gurmukh Singh never existed. It was found that no person in the name of Gurmukh Singh son of Pritam Singh ever resided in the village during the course of investigation carried out by the police.

3. Heard the learned counsel representing the appellant and with his able assistance, perused the paper-book.

4. While contending that the appellant is a bonafide purchaser, the learned counsel submits that after inspecting the revenue record for a period of ten years the appellant purchased the property through a registered sale deed. He further submits that the family of the plaintiff had admittedly shifted to Delhi and they were not in possession thereof.

5. As per Section 41 of the Transfer of Property Act, 1882 (hereinafter referred to as “the 1882 Act”), there is a concept of the transfer of the property by the ostensible owner. One of the essential requirement is that the alleged ostensible owner has sold the property with the consent,

expressed or implied, of the real owner. This issue is no longer *res integra*.

The Supreme Court while interpreting Section 41 of the 1882 Act in *Hardev Singh v. Gurmail Singh (Dead) By LRs (2007)2 SCC 404* has culled out the following ingredients:-

- (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.*

6. In the present case, the appellant has failed to show that the plaintiff ever, expressly or impliedly, acknowledged Gurmukh Singh or Satnam Singh as owners. In such circumstances, this court expresses its inability to accept the first argument of the learned counsel representing the appellant.

7. The next argument of the learned counsel is with regard to failure of the plaintiff to challenge the sale deeds, allegedly executed by Gurmukh Singh in favour of Satnam Singh, who further sold it to Balihar Singh. Admittedly, the plaintiff was not a party to the aforesaid sale deeds. Hence, these sale deeds are not binding on the plaintiff. The concept of challenging a document comes into play only if the person is party to the document. In other cases, these documents are not binding on him. The plaintiff has already filed a suit for declaration with regard to ownership on the basis of a sale deed, dated 29.06.1982, the correctness whereof is not disputed. Moreover, the appellant has failed to prove the title of his predecessor-in-interest i.e. Gurmukh Singh, whose existence itself is not

proved.

8. Keeping in view the aforesaid facts, no ground is made out to interfere. Consequently, both the appeals are dismissed.

9. The miscellaneous application(s) pending, if any, in both the appeals, shall stand disposed of.

(Anil Kshetarpal)
Judge

June 02, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No