

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

105

RSA NO.6058 of 2016 (O&M)  
Date of Order: 26.04.2022

Inderjit Kaur

Versus

..Appellant

Gurdip Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljit Singh, Sr. Advocate, with  
Ms. Shazia K. Singh, Advocate  
for the appellant.

Mr. A.S.Gill, Advocate  
for respondent no.1.

Mr. Chanchal K. Singla, Advocate  
and Ms. Kashish Sahni, Advocate  
for respondent no.2.

**ANIL KSHETARPAL, J(Oral)**

While assailing the concurrent findings of fact arrived at by the courts below, defendant no.2, has filed the present Regular Second appeal.

The plaintiffs filed a suit for grant of decree of declaration claiming that they are owners in possession of property bearing No.338-R, Model Town, Jalandhar, on the basis of sale deeds dated 07.01.1975 and 10.01.1975, which were registered with the office of Sub-Registrar, Jalandhar. They also sought declaration that the judgment and decree dated 14.03.2005 and the sale deed dated 23.08.2005, are liable to be ignored as it does not affect the rights of the plaintiffs.

Undoubtedly, the property in question was allotted to late Sh. Parmanand Kalra in the year 1949. He died on 12.10.1953. He left behind

his widow Satya Wati. The plaintiffs claim that Satya Wati sold the property to Balwant Kaur, who in turn sold the property in favour of Ami Chand son of Sant Ram, who in turn sold the property to the plaintiffs. The plaintiffs claim that defendant No.1 fabricated an agreement to sell dated 09.02.1988 from late Sh. Parmanand Kalra, who had already died on 12.10.1953. Thereafter, Harbans Singh Deol-defendant no.1, filed a suit for specific performance of the agreement to sell which was decreed ex-parte, on 14.03.2005.

The defendants while filing the separate written statements contested the suit. Defendant no.1 asserted that late Sh. Parmanend Kalra did not die on 12.10.1953. Defendant no.2 claim that she is bonafide purchaser of the property from defendant no.1, vide sale deed dated 23.08.2005. It was asserted that she before purchasing the property carried out due diligence by inspecting the court decree and the sale deed executed through the agency of the Court.

Both the Courts on appreciation of evidence have concurrently found that late Sh. Parmanand Kalra died on 12.10.1953. Thus, it is evident that the alleged agreement to sell set up by defendant no.1-Harbans Singh Deol was an act of forgery. Consequently, both the courts decreed the suit.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book as well as the record which was requisitioned.

The learned senior counsel representing the appellant contends that the appellant took all possible steps to verify the title of her vendor therefore, her rights should be protected.

Per contra, the learned counsel representing the respondents

contends that it is well settled that no one can pass a better title than one who owns the property.

It appears that defendant no.2 (the appellant herein) has been duped by defendant no.1. However, that itself is not a sufficient to grant any relief. In *Hardev Singh vs. Gurmail Singh (dead) by LRs (2007) 2 SCC, 404*, the Supreme Court after discussing Section 41 of the Transfer of Property Act, has held that the following ingredients are required to be fulfilled before some one can be declared a bonafide purchaser:-

- (1) the vendor should be an ostensible owner.
- (2) the sale is for valuable consideration.
- (3) The actual owner by the express or implied consent has projected the ostensible owner to be the true owner.
- (4) The transferee has taken reasonable care to ascertain the title of his vendor.

It is evident that the appellant fails to fulfill test no.3, as laid down by the Supreme court.

In view thereof, no ground to interfere is made out.

Dismissed.

However, the appellant shall have liberty to file a suit for recovery against Harbans Singh Deol or his legal representatives.

All the pending miscellaneous applications, if any, are also disposed of.

April 26, 2022

nt

(ANIL KSHETARPAL)  
JUDGE

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