

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

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**RSA-6443-2016(O&M)
Date of Order: 01.04.2022**

MAJOR SINGH

..Appellant

Versus

SURINDER SINGH & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Singh, Advocate
for the appellant.

Mr. Ashwani Chopra, Sr. Advocate
with Mr. Brahmjot Singh Nahar, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

While assailing the concurrent findings of the fact arrived at the Courts below, defendant No.1 has filed the present appeal. After a long drawn litigation between the legal representatives of Sh. Harbans Singh, the parties entered into a settlement which resulted into a Court decree on 14.12.1983. The settlement deed which was in the form of an application was signed by Sh. Nirmal Singh son of Smt. Nihal Kaur as well as counsel representing Smt. Nihal Kaur. Thereafter, Smt. Nihal Kaur is stated to have sold 1 bigha 6 biswas land in favour of the appellant vide sale deed dated 22.06.1984.

As per the deed of compromise which later on formed part of the decree, Smt. Nihal Kaur was not left with any right, title or interest in the suit property. Sh Nirmal Singh was given 1/5th share.

The plaintiff filed the suit for grant of decree of declaration that the plaintiff and defendant No.2 are the owners of the suit land. The

defendant contested the suit claiming to be a bona fide purchaser. The trial Court decreed the suit. During the pendency of the first appeal, the plaintiff filed an application under Order 41 Rule 27 CPC for leading additional evidence. Another application for framing additional issue was also filed.

The learned First Appellate Court on re-appreciation of evidence, dismissed both the applications and found that defendant No.1(appellant) is not a bona fide purchaser. It was recorded that although, defendant No.1 claims that he contacted the plaintiffs before purchasing the suit property, however, he failed to substantiate the same. It was also found that the stand taken by the defendant No.1 is totally vague and unbelievable. Thus, the First Appellate Court dismissed the appeal.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

The learned counsel representing the appellant contends that Smt. Nihal Kaur was recorded as the owner in the revenue record and defendant No.1 purchased the property after due diligence. He, hence, submits that the defendant is a bona fide purchaser. He further contends that Smt. Nihal Kaur did not sign the settlement deed, therefore, the same is not binding on her.

Per contra, the learned Senior counsel representing the plaintiff submits that once Smt. Nihal Kaur was not the owner of the property, consequently, she could not transfer the title than what she had. He further contends that the deed of compromise is signed by Sh. Nirmal Singh and defendant No.2 as well as the counsel representing Smt. Nihal Kaur. Smt. Nihal Kaur, thereafter, remained alive for a period of 7 years approximately, but she never questioned the settlement.

As regards the first argument, it may be noted here that the appellant has failed to prove that he is a bona fide purchaser. Despite assertion, the defendant has failed to prove that he consulted the plaintiff before purchase. Furthermore, both the Courts have found that the defendant No.1 is not in possession. Moreover, Smt. Nihal Kaur was not the owner of the property. Hence, she could not pass on any title in favour of the appellant.

As regards the second argument of the learned counsel representing the appellant, it may be noted here that the deed of settlement is signed by the counsel representing Smt. Nihal Kaur. It is also signed by Sh. Nirmal Singh real son of Smt. Nirmal Kaur. All the females who are party to the settlement had signed through their counsel. The counsel representing Smt. Nihal Kaur appeared in the Court when the decree was passed. Smt. Nihal Kaur never questioned the said settlement. In fact, in the aforesaid settlement, Sh. Nirmal Singh was given 1/5th share of the property equal to the other brothers.

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

Dismissed.

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

April 01st, 2022

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(ANIL KSHETARPAL)
JUDGE

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