

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

129

RSA-340-2020(O&M)

Date of Decision:08.08.2023

AMRIK SINGH

....Appellant

Versus

JEET SINGH AND ORS

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

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

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by defendant No.1 challenging the concurrent finding of decretal of suit, whereby a declaratory decree in favour of the plaintiff has been confirmed to the effect that plaintiff-Jeet Singh is owner in possession to the extent of 5/9th share in the land bearing **Khewat No.343, Khatoni No.439, Khasra No.29//29/0-16**, situated at Village Kadrabad, Tehsil and District Kapurthala as per Jamabandi for the year 2003-04, where defendants No. 1 to 3 are co-sharer to the extent of 4/9th share. A decree for permanent injunction has also been sought restraining the defendants No.1 to 3 from alienating in any manner more than 4/9th share out of the disputed land.

2. In the written statement filed by defendants No. 1,2 and 4, it was specifically pleaded that the defendants are bonafide purchasers by paying valuable considerations and the land was purchased after making due enquiry. **It is noticeable that even as per**

the pleadings in the written statement, it has been specifically admitted that share of plaintiff has been wrongly recorded as 1/3rd instead of 5/9th share. It was also pleaded that Mohinder Singh was owner of 6/9th share in suit land and he had correctly sold the same and the entry in favour of defendants No.1 to 3 to the extent of 2/3rd share is correct.

3. Upon pleadings of both the sides, learned trial Court framed total ten issues, which are reproduced as under:

- '1. Whether the plaintiff is entitled to the relief of declaration, as prayed for? (OPP)*
- 2. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? (OPP)*
- 3. Whether the suit is not maintainable in the present form? (OPD)*
- 4. Whether the plaintiff has got no locus standi or cause of action to file the suit?(OPD)*
- 5. Whether the plaintiff has not come to the Court with clean hands, if so, its effect?(OPD)*
- 6. Whether the suit is bad for non-joinder of necessary parties?(OPD)*
- 7. Whether the Court fee paid is insufficient?OPD*
- 8. Whether the suit of the plaintiff is barred by limitation?OPD*
- 9. Whether the defendants No.1, 2 and 4 are bonafide purchasers for valuable consideration? (OPD)*
- 10. Relief'*

4. While considering issue No.1, which was taken alongwith issue Nos.2 and 9, trial Court found that plaintiff is owner in possession of the land to the extent of 5/9th share and the said fact has also been admitted by the defendants in their written statement. From the documentary evidence, it was concluded that instead of 5/9th share plaintiff is recorded to be owner of 1/3rd share only. Accordingly, suit filed by the plaintiff was decreed.

5. Learned First Appellate Court has also affirmed the findings of

fact recorded by the trial Court, rather, Court did not believe the version of the defendants that they are the bonafide purchasers. The relevant paragraph No.15 of the judgment is reproduced hereunder:

'15. In view of discussed above, it cannot be concluded that while purchase of land vide sale deeds EX.D1 and EX.D6, the defendants had acted in good faith after taking reasonable care to ascertain that the transferor had complete power to make the transfer and thus having the protection of proviso to Section 41 of Transfer of Property Act. Vide the above-said sale deeds Mohinder Singh co-sharer is found to have sold more than his share in the suit land which was 4/9 share, whereas he had sold 6/9 share. He could not have transferred a better title than he himself was possessing.'

6. Since, there is already concurrent findings of fact and basic relief claimed by the defendants has been admitted in the written statement , this Court does not find any substantial reason to interfere with the concurrent findings of fact recorded by the Courts below. **Thus, while maintaining the impugned judgment and decree, the present appeal stands dismissed.**

**[SANJAY VASHISTH]
JUDGE**

August 08, 2023
rashmi

Whether speaking/reasoned
Whether reportable?

Yes/no
Yes/no