

2023:PHHC:147583

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

RSA-2971-2016(O&M)

Date of Decision:20.11.2023

Chaman Lal

.....Appellant/defendant no.1

Vs

Kulwinder Singh and others

....Respondents/plaintiff

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present :- Mr. Vijay Sharma, Advocate
for the appellant.

SANJAY VASHISTH, J. (Oral)

1. This is a regular second appeal filed by appellant/defendant no.1-Chaman Lal against the concurrent findings of the Courts below whereby suit of the plaintiff for seeking a decree of declaration to the effect that the plaintiff alongwith performa defendants no.3 to 5 are owners-in-joint possession in equal share each 186/1488, by virtue of having share through the registered sale deed bearing vasika No.586 dated 02.05.1993, has been decreed.

2. Defendant no.1-Chaman Lal (appellante herein) had taken a stand that the area in question has been purchased by him vide registered sale deed dated 27.04.2007 from defendant no.2-Mohinder Singh. He also pleaded that the revenue entries were checked and thereafter, the land in question was purchased by him from defendant no.2 Mohinder Singh.

Defendant no.1 further pleaded that vide lease dated 20.07.1987,

he was already having possession of the land in question and therefore, till date possession is retained by him, initially as lessee and thereafter, in the capacity of owner *qua* the share of Mohinder Singh.

3. Trial Court recorded its finding that at the relevant time, in *jamabandi* for the year 1991-92 in Column No.12 a specific note of transfer of the suit land which was sold by the defendant no.2 to the plaintiff and performa defendants no.3 to 5, is available. Thus, Court took note of the fact that plaintiff and defendants no.3 to 5 are owners in joint possession in equal shares of the suit property.

4. As per the finding recorded, after sale of the suit land in favour of performa defendants no. 3 to 5, in fact, defendant no.2 was left with no right, title or concern in the suit property in any capacity whatsoever. Even, he could not be considered as a co-sharer in the land. It is also recorded that on the basis of the *vasika* no.586 dated 02.06.1993 in favour of the plaintiff and performa defendants no.3 to 5, one mutation No.9791 had already been sanctioned, but same was not entered in the subsequent *jamabandi* and due to the said mistake of the revenue officials, mutation no.9791 of village Samana could not be acted upon. Though there, is a specific note in the remarks column of the then prevalent *jamabandi* for the year 1991-1992 but while preparing *jamabandi* for the year 1996-1997 said note was not mentioned. Therefore, the wrong entry continued in the *jamabandi* after 1996-1997 onwards.

5. The Court has also recorded its finding that inspite of coming to know of the sale prior in time in favour of plaintiff and performa defendants no.3 to 5, defendant no.1 or defendant no.2 never challenged the sale deed

earlier executed in favour of the plaintiff and performa defendants no.3 to 5. Thus, sale deeds in favour of the plaintiff is intact being not challenged before any Court or authority till date.

6. Therefore, finding no substance in the plea of the contesting defendant no.1, suit has been decreed in favour of the plaintiff by the trial Court.

7. Learned counsel for the appellant/defendant no.1 addresses only one argument that he being a *bona fide* purchaser is entitled to retain the land in question and plea in that regard has also been taken in written statement.

8. I have gone through the judgments of both the Courts below but do not find any substance in the argument addressed.

9. Even otherwise, this Court is of the view that the plea of *bona fide* purchaser would not be available to the appellant/defendant no.1 in the fact and circumstances of the case because the sale deed dated 27.04.2007 executed by defendant no.2-Mohinder Singh in favour of appellant/defendant no.1 is null and void, *ab initio*. Defendant no.2 was left with no right in the land in question once, it is found that defendant no.2 had already sold out his complete share to the plaintiff/respondent no.1 and performa defendants no.3 to 5 vide registered sale deed dated 02.05.1993 itself. Therefore, purchase, if any, done by appellant/defendant no.1 is from the person who was not even having right in the property in any manner and in case any fraud has been committed against him, there is no substance before this Court to examine that at any point of time, any remedy available under the law to such defrauded person, has ever been resorted by appellant/defendant no.1. Therefore, the defence taken by appellant/defendant no.1 is also

misconceived.

10. Even no question of law much less substantial question of law arises in the present appeal for consideration of this Court.

11. I do not find any substantial reason to disturb the findings of both the Courts below.

12. Therefore, the impugned judgment/decreed is maintained by dismissing the appeal.

20.11.2023
dharamvir

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No