

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

103

RSA No.1332-2018

Date of Decision: 27.07.2023

THE LUDHIANA IMPROVEMENT TRUST

....Appellant

Versus

NAGINDER KAUR AND ORS

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Nikhil Sabharwal, Advocate  
for the appellant.

Mr. Anurag Chopra, Advocate  
for respondents No. 1 to 4.

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**SANJAY VASHISTH, J.(Oral)**

1 Present regular second appeal has been filed by the Ludhiana Improvement Trust against the concurrent findings of facts and law, whereby suit filed by the plaintiff (appellant herein) was dismissed.

2. Civil Suit was instituted challenging the sale deed executed on 24.03.1998 by one Prehlad Singh, then Chairman, Improvement Trust, Ludhiana and registered with the Registrar on 25.03.1988 vide Vasika No.23278, in favour of respondents No.1 and 2 ( herein defendants No. 1 and 2 ) seeking the same to be null and void and carrying no right in favour of the vendees.

3. Basic ground to challenge the said sale deed is that, then Chairman, Sh. Prehlad Singh had no authority to execute the sale deed in his personal capacity on behalf of Improvement Trust, Ludhiana.

The property is pleaded to be commercial one, which was required to be sold out in the open market by way of conducting the auction proceedings.

4. It is further pleaded that defendants No. 3 and 4 (herein respondents No.3 and 4 ) in whose favour the property was further sold out and registered through the plaintiff (herein appellant) subsequently, was also null and void.

5. In the written statement filed by defendants No. 1 and 2, preliminary objections were raised that the suit is time barred and plaintiff has no cause of action to file the present suit. Apart the other technical objections, on merits, it was pleaded that the sale deed dated 24.03.1988 in their favour regarding the sale of 388 sq. yards of land by the then Chairman Prehlad is legal, valid and according to law and the said plan for construction over the piece of suit land was sanctioned rightly .

6. Defendants No.1 and 2 also pleaded that they being the bonafide purchaser, after making payment of the said plot, further sold out the same to defendants No.3 and 4, who are also the bonafide purchasers of the sale property. Thus, even if the plot is sold to the plaintiff without following the due process and got registered in the name of defendants No. 1 and 2 in the record of the improvement trust, there was every reason with the defendants to take a stand of bonafide purchasers.

7. On the basis of the pleading of the parties, the following

issues were framed, which are reproduced hereunder:

- 1. Whether the sale deed dated 24.03.1988 bearing Wasika No.123278 dated 25.03.1988 in favour of defendants no.1 and 2 is illegal, null and void etc. ?OPP*
- 2. Whether the suit has been filed through a competent person?OPP*
- 3. Whether Chairman of the Ludhiana Improvement Trust, Ludhiana was competent to execute the sale on behalf of the Trust?OPP*
- 4. Whether the suit is within time?OPP*
- 5. Whether the defendants no.3 and 4 are bonafide purchasers with consideration and without notice, if so its effect?OPD(3&4)*
- 6. Whether the plaintiff is estopped from filing the present suit for his own act and conduct?OPD*
- 7. Whether the suit is not maintainable in the present form?OPD*
- 8. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction?OPD*
- 9. Relief'*

8. Under issue No. 1,3 and 4, trial Court framed a main question for its decision 'whether the sale deed dated 24.03.1988 (Ex.Dx-6) is legal and valid or not?' Legality or validity of the sale deed dated 24.03.1988, would further determine the legality and validity of the sale deed dated 30.06.1994 (Ex-DX-7/Ex.DX-1).

9. Learned trial Court has also discussed at length that as per Section 3 of the Transfer of Property Act, 1882, a registered document is a notice to all general public including the executors. The sale deed has been executed by the Trust Chairman and same was presented by the officials to Sub-registrar.

10 Even the sale consideration has been deposited on 25.03.1988 in the account of plaintiff-Trust (Ex.DX-2/Ex.P-3), therefore, it does not lie in mouth of the improvement Trust to say that the factum of execution of sale deed came to their notice in the year 1988.

Holding that the limitation for challenging the said sale of the plot was three years as per Article 69 of the Limitation Act, suit is held to be time barred.

11. It is also considered and held that neither there is pleading in regard to the particulars of fraud; nor there is any evidence. Thus, this Court is also of the view that without alleging and proving the fraud having been played by the predecessor or the then Chairman, the bonafide purchasers of the property cannot be made to suffer because of lapse on the part of the improvement trust.

12. There is another fact to notice that defendants No.3 and 4, who claimed themselves to be the bonafide purchasers cannot be put to loss or made to suffer because of the lapses in the functioning of the improvement trust. By the time, the suit was filed, ownership was already with defendants No.3 and 4, who purchased the plot on 30.06.1994, in whose favour also the Improvement Trust executed the sale deed and even by that time also, limitation of three years of filing the suit for the Improvement Trust had expired.

13. Sound reasonings have been given by the First Appellate Court also in paragraph Nos. 35 and 36 of the judgment dated

06.02.2017, wherein it has been held that the possession of the suit property is with defendants. For the sake of convenience, paragraphs No. 35 and 36 are reproduced here under:

*'35.The defendants have further taken the plea that simple suit for declaration without seeking possession is not maintainable, when the plaintiff is not in possession of the suit property. The plaintiff claims that possession of the suit property was never delivered to the defendants under the alleged sale deed. However, the defendants have examined official from the Municipal Corporation, who has proved on record installation of water and sewerage connections and allotment of the number to the property in question. Even mutation was sanctioned in favour of defendants on the basis of sale deed. Even the witnesses of plaintiff have stated that they do not know if possession was delivered to defendants. All these facts clearly show that the plaintiff is not in possession of the suit property and rather the suit property is in possession of the defendants.*

*36.Learned counsel for the plaintiff has referred to AIR 2011 (SC), 2203, where the plaintiffs sought declaration that they were owners of the property. They did not sought possession of the property. It was held that simple suit for declaration without seeking possession was not maintainable. He has also referred to 2007(2) RCR 628 on the same point. The ratio of these authorities also could not be rebutted. The defendants have even examined Tarlochan Singh as DW5, who has stated that the possession was handed over to defendants No.3 and 4 in his*

*presence. This evidence has also remained un rebutted. Ld. Lower Court has thus rightly held that the plaintiff was not in possession of the suit property and thus simple suit for declaration without seeking possession is not maintainable.'*

14. Keeping in view of the concurrent findings of the facts and law, by both the Courts below and noticing that suit of the plaintiff was not maintainable without asking for possession alongwith the declaration. There being no strong reason or ground to disturb the impugned judgment and decree, thus, same is maintained.

15. Appeal carries no substance, hence, dismissed.

[SANJAY VASHISTH]  
JUDGE

July 27, 2023  
rashmi

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/no |
| Whether reportable?       | Yes/no |