



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

RSA-836-1994 (O&M)

Date of decision: 15.05.2024

Balbir Singh (since deceased) through his LR's and others

....Appellants

Versus

Amar Chand (since deceased) through his LR's and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Navjot Singh, Advocate for appellant no.1 to 3
Mr. Sarju Puri, Advocate for the appellant no.4

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for declaration to the effect that they are owners in joint possession of the land measuring 34 kanals 7 marlas situated in the revenue estate of Village Behram, Tehsil Nawanshahr, District Jalandhar. In the alternative, they also pray for a decree for joint possession.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Late Sh. Santa Singh was the owner of the property. He died on 28.09.1968, while leaving behind two sons namely Sh.Balwant Singh and Amrik Singh and two daughters namely Smt.Gurdeep Kaur and Smt.Gurmeet Kaur. Sh.Balwant Singh claiming to be the exclusive heir of the property, entered into an agreement to sell with the plaintiffs, however, he failed to honour the same, forcing the plaintiffs to file a suit



for possession by way of specific performance of the agreement to sell, which was decreed ex-parte on 03.12.1979. In the execution petition, sale deed was registered in favour of the plaintiffs on 17.12.1986, through the process of the court. However, the revenue authorities despite sale deed dated 17.12.1986, sanctioned mutation in favour of all the four heirs of late Sh.Santa Singh. Subsequently, two daughters namely Smt.Gurmeet Kaur and Smt.Gurdeep Kaur executed two sale deeds dated 01.04.1980 and 03.12.1980 transferring 6 kanals 19 marlas each. The defendants contested the suit claiming that they are the bonafide purchasers and the decree dated 03.12.1979 is not binding upon them. Both the courts decreed the suit.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith requisitioned record of the courts below.

5. Two following submissions have been made by the learned counsels representing the appellants:-

i) the appellants are the bonafide purchasers as in the year 1980, the revenue record reflected that the daughters are also the owners of the property, hence, the appellants have shown due diligence.

ii) the ex-parte judgment and decree dated 03.12.1979 is neither binding on the appellants nor their predecessor.

6. This Court has considered the submissions put forth by the learned counsel representing the parties.

7. In the facts of the case, the concept of bonafide purchaser as provided under Section 41 of the Transfer of Property Act, 1882



(hereinafter referred to as '1882 Act') shall be relevant, which is extracted as under:-

“41. Transfer by ostensible owner.—

Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

8. While dissecting Section 41 of the 1882 Act, the Supreme Court in **Hardev Singh vs. Gurmail Singh (dead) by Lrs (2007) 2 SCC 404**, has held that the following necessary ingredients are required to be fulfilled before someone can be declared a bonafide purchaser:-

- (a) the vendor should be an ostensible owner
- (b) the sale shall be for valuable consideration.
- (c) he shall be projected as owner by express or implied consent of the actual owner.
- (d) The transferee has taken reasonable care to ascertain the title of his vendor.

9. It is evident that there is neither any plea nor any evidence that either the plaintiffs or their predecessor Sh.Balwant Singh ever represented to the appellants that the two daughters of late Sh.Santa Singh namely Smt.Gurmeet Kaur and Smt.Gurdeep Kaur were owners of the property. In the absence thereof, the statement of the appellants that they have become the bonafide purchasers cannot be accepted.



10. It is also a well settled legal principle that one cannot transfer a title better than one possesses. In this case, Smt.Gurmeet Kaur and Smt.Gurdeep Kaur never claimed any share in the property. They never questioned the correctness of either the civil court decree dated 03.12.1979 or the sale deed. The registered sale deed is deemed to be in the knowledge of the appellants as well as their predecessor as per Section 3 of the 1882 Act.

11. With respect to the second submission of the learned counsel representing the appellants, it may be noted that the vendors of the appellants have never claimed any right, title or interest in the property left behind by late Sh.Santa Singh except executing two sale deeds. These sale deeds have been executed after a period of 12 years from the date of death of late Sh.Santa Singh. In between Sh.Balwant Singh not only entered into an agreement to sell but also a decree was passed against him for specific performance of the agreement to sell. The vendors of the appellants have neither become a party to the aforesaid proceedings nor they subsequently assailed its correctness.

12. Keeping in view the aforesaid facts, no ground to interfere is made out.

13. Hence, dismissed.

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

15.05.2024
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No