

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.5953 of 2014 (O&M)
Date of Decision : 16.02.2024

Hari Kishan

....Appellant

VERSUS

Sant Ram and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhishek Sharma, Advocate for
Mr. K.B. Sharma, Advocate for the appellant.

Mr. Ashok Kaushik, Advocate for the respondent Nos.1 to 4.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 12.03.2012 passed by the Trial Court and the judgment and decree dated 03.07.2014 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration as well as for permanent injunction averring in the plaint that defendant-respondent No.1 - Sant Ram - and defendant-respondent No.5 - Lajja Ram @ Ghurey - were joint owners in possession of agricultural land detailed and described in para 1(a), 1(b), 1(c) and 1(d) of the plaint. It was further the case set up that defendant-respondent No.1 - Sant Ram - sold 8 kanals of his share to the plaintiff-appellant bearing Killa Nos.15/1 (4-0) and 15/2 (4-0) of Rect. No.51 for a sale consideration of Rs.2,25,000/- vide a registered sale deed dated

12.02.2001. It was further the case that the defendant-respondent No.1 - Sant Ram - was in actual physical possession of the said khasra numbers and he handed over physical possession to the plaintiff-appellant subject to partition. It was further averred in the plaint that in the sale deed dated 12.02.2001 the defendant-respondent No.1 had clearly mentioned that there was no charge on the suit land and it was not the subject matter of any decree of any Court. At the time of execution of the sale deed dated 12.02.2001, the defendant-respondent No.4 - Kanti - wife of defendant-respondent No.1 was also present and that defendant-respondent Nos.1 and 4 never disclosed to the plaintiff-appellant that they had illegally suffered a decree of declaration in respect of the land in dispute in favour of defendant-respondent Nos.2 and 3 through their mother (defendant-respondent No.4) in Civil Suit No.1129 of 1999 decreed on 03.04.1999/03.05.1999. It was further averred that the said decree was collusive and not binding on the rights of the plaintiff-appellant. The prayer in the suit was that a decree of declaration be passed declaring the plaintiff-appellant to being owner in possession of the suit land subject to partition and the impugned order dated 06.12.2004 sanctioning mutation No.2318 in favour of the defendant-respondent Nos.2, 3, 6 and 7 and rejecting the mutation No.2319 in favour of the plaintiff-appellant be declared as illegal, null and void and ineffective qua the rights of the plaintiff-appellant and that a mutation is liable to be sanctioned in favour of the plaintiff-appellant and further for permanent injunction. The defendant-respondents put in appearance and filed their written statement taking the preliminary objections regarding lack of jurisdiction, lack of cause of action and concealment of facts. On merits it was stated that they are owners in possession of the share of defendant-

respondent No.1 - Sant Ram - and that Sant Ram never sold the land measuring 8 kanals to the plaintiff-appellant and that the sale deed was illegal, null and void. It was further averred that the defendant-respondent No.1 was present only for the loan regarding the suit land, however, the plaintiff-appellant obtained the alleged sale deed. No replication was filed by the plaintiff-appellant.

3. On the basis of pleadings the following issues were framed :

1. Whether the plaintiff is owner in possession of land detailed in para no.2 of the plaint, subject to partition out of land detailed in para no.1 of the plaint ? OPP
2. Whether impugned order dated 06.12.2004 is illegal, null and void and liable to be set aside ? OPP
3. Whether plaintiff is entitled for permanent injunction as prayed for ? OPP
4. Whether the Civil court has no jurisdiction to entertain and try the present suit ? OPD
5. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
6. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
7. Relief.

4. On the basis of pleadings of the parties and the evidence on record, the suit was dismissed by the Trial Court vide judgment and decree dated 12.03.2012. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree dated 03.07.2014. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant is a *bonafide* purchaser of the suit land and that there was no record of the decree in the revenue record when he purchased the

property and that mutation was entered into subsequently. It is further the contention that the transfer would be protected under Section 41 of the Transfer of Property Act, 1882 since the plaintiff-appellant had made all his enquiries and the consent decree had also not been acted upon. Learned counsel for the plaintiff-appellant has relied upon judgments of this Court in the cases of **Pardeep vs. Naresh & Ors. [2023(1) Law Herald 22]** and **M/s Harbanspura Iron and Steel Industries vs. Amar Nath & Ors. [2016(2) LAR 84]**.

6. Per contra learned counsel for defendant-respondent Nos.1 to 4 has contended that the plaintiff-appellant approached the Court when mutation in his favour was not sanctioned and mutation in favour of defendant-respondents was sanctioned on the basis of a consent decree. Yet there is no challenge to the consent decree in the present suit though in the body of the plaint an averment has been made qua the decree. However, there is no prayer for setting aside the said judgment and decree and the only prayer is challenging the mutation. It is further the contention of learned counsel for respondent Nos.1 to 4 that there is no plea regarding *bonafide* purchaser which has been raised by the plaintiff-appellant in his pleadings and hence the plaintiff-appellant cannot take the benefit of Section 41 of the Transfer of Property Act, 1882.

7. Heard counsel for the parties and perused the paperbook.

8. In the present case the plaintiff-appellant approached the Court averring in the plaint that he purchased the property in dispute from Sant Ram vide sale deed dated 12.02.2001. It was further averred that mutation No.2319 was sanctioned in his favour on the basis of the said sale deed, however, the same was subsequently cancelled and mutation No.2318 was

sanctioned in favour of the defendant-respondent Nos.2, 3, 6 and 7 on the basis of consent decree. The plaintiff-appellant though challenged the mutation, however, chose not to challenge the consent decree dated 03.05.1999 in favour of defendant-respondent Nos.2, 3, 6 and 7. The plaintiff-appellant also chose not to raise the plea of *bonafide* purchaser in his pleadings. Infact, no issue was framed regarding the plaintiff-appellant being a *bonafide* purchaser since the plea was not raised by him. Even before the First Appellate Court there is no plea of *bonafide* purchaser raised by the plaintiff-appellant. In the absence of even having raised the plea of *bonafide* purchaser, the plaintiff-appellant cannot possibly take the benefit of Section 41 of the Transfer of Property Act, 1882. Therefore, the judgment relied upon by learned counsel for the plaintiff-appellant in the case of **Pardeep** (supra) and **M/s Harbanspura Iron and Steel Industries** (supra) would have no applicability. Further, both the Courts have concurrently found that Sant Ram had no right, title or interest in the suit property which stood transferred by him on 03.05.1999. No other point was argued.

9. In view of the above, no question of law much less substantial question of law arises for determination in the present case. The appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

16.02.2024

jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO