

**IN THE HIGH COURT OF PUNJ AB AND HARYANA AT CHANDIGARH****106****RSA-4033-2018 (O&M)****Date of Decision : 21.10.2024**

Kabal Singh

....Appellant

VERSUS

Mohinder Kaur and Others

....Respondents

106-1**RSA-4438-2018 (O&M)**

Kabal Singh

....Appellant

VERSUS

Mohinder Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Inderjit Sharma, Advocate
for the appellant in both the appeal.

Ms. J.S. Thind, Advocate
for respondent No.1 in both the appeals.

ALKA SARIN, J. (Oral)

1. Present order shall dispose off both the above-captioned appeals being RSA-4033-2018 and RSA-4438-2018 filed by defendant No.3-appellant challenging the judgment and decree dated 25.01.2016 passed by the Trial Court and the judgment and decree dated 28.11.2017 passed by the First Appellate Court whereby the cross-appeal filed by the plaintiff-respondent No.1 herein was allowed and the appeal filed by the defendant No.3-appellant herein was dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for declaration and permanent injunction averring in the plaint that Kuldeep Singh and Baldev Singh had sold their share in land to the extent of 04 Kanals to the plaintiff-respondent No.1 vide registered sale deed dated 06.02.2008 for a total sale consideration of Rs.9,00,000/- and mutation was also sanctioned in favour of the plaintiff-respondent No.1 and hence the plaintiff-respondent No.1 had become owner in possession of the suit property on the basis of the said sale deed and the mutation. It was further averred that Narinjan Singh (defendant No.1-respondent No.2 herein) had sold the land measuring 3 Kanals 12 Marlas out of Khasra No.1631 in favour of plaintiff-respondent No.1 vide sale deed dated 19.08.2002 for a sale consideration of Rs.50,000/- and that out of his land holding of 11 Kanals 02 Marlas he had already sold in excess of his share. It was further averred that defendant-respondent No.2 herein gave a General Power of Attorney in favour of Balwinder Singh (defendant-respondent No.3 herein) dated 26.11.2007. On the basis of the said Power of Attorney, defendant-respondent No.3 sold the land to the defendant No.3-appellant vide sale deed dated 03.01.2011. It was further averred that the sale deed executed by defendant-respondent No.3 in favour of the defendant No.3-appellant herein was illegal, null and void and had no effect on the rights of the plaintiff-respondent No.1. On notice, the defendant-respondent Nos.2 and 3 appeared and filed their written statement raising various preliminary objections. On merits, it was pleaded that Baldev Singh was a co-sharer in a joint Khata. It was denied that Baldev Singh was in actual

cultivating possession of the land bearing Khasra No.1679 (1-16), 1690 (0-10), 1691 (0-14) and 1725 (1-10). It was further pleaded that the sale deed dated 06.02.2008 allegedly executed in favour of the plaintiff-respondent No.1 was null, void, illegal and without consideration and was in excess of the share of Baldev Singh. It was further averred that the actual physical possession of Khasra Nos.1690 and 1691 was that of the defendant-respondent No.2 herein. It was further averred that Baldev Singh had already filed an application for partition under Section 111 of the Land Revenue Act, 1887. It was further the case set up that the Power of Attorney dated 26.11.2007 had been given to defendant-respondent No.3 herein and the sale deed was executed on the basis of the said General Power of Attorney. The defendant No.3-appellant herein filed a separate written statement averring therein that plaintiff-respondent No.1 was neither owner nor in possession of the suit property and that he was a bonafide purchaser for a valuable consideration without notice on the basis of sale deed dated 01.03.2011 executed by defendant-respondent No.3 as attorney of defendant-respondent No.2 herein and that the sale deed was legal, valid and sustainable in law and that the sale deed was for a valuable consideration. Replication was filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of Permanent Injunction as prayed in the head-note of the plaint ? OPP

2. Whether the plaintiff is entitled to the relief of declaration to the effect that General Power of attorney given by defendant no.1 in favour of defendant no.2 as detailed in the head-note of the plaint is illegal, null and void and does not affect the rights of the plaintiff in the suit property ? OPP
3. Whether the plaintiff is entitled to consequential relief of Permanent Injunction for restraining the defendant no.2 from alienating the suit property as prayed for in the head-note of the plaint ? OPP
4. Whether the present suit is not legally maintainable ? OPD
- 5) Whether the plaintiff has no cause of action to file the present suit ? OPD
- 6) Relief.

The following issues were again framed on 19.09.2015 :

1. Whether plaintiff is entitled for Permanent Injunction as prayed for ? OPP
2. Whether plaintiff is entitled for declaration as prayed for ? OPP
- 2A Whether the General power of attorney given by defendant No.1 in favour of defendant No.2 bearing Vasika no.3759 dated 26.11.2007 is illegal, null and void? OPP

2B Whether the sale deed dated 03.01.2011 registered vide document No.9615 executed by defendant No.2 as attorney of defendant no.1 in favour of defendant No.3 is illegal null and void ? OPP

3. Whether plaintiff is neither owner nor in possession of the property in dispute ? OPD

4. Whether suit of plaintiff is not maintainable ? OPD

5. Whether plaintiff has no cause of action to file the present suit ? OPD

6. Relief.

3. The Trial Court vide judgment and decree dated 25.01.2016 partly decreed the suit setting aside the General Power of Attorney dated 26.11.2007 and sale deed dated 03.01.2011. However, the prayer for permanent injunction was declined. Aggrieved by the same appeals were preferred by both the defendant No.3-appellant and the plaintiff-respondent No.1. The First Appellate Court vide judgment and decree dated 28.12.2017 disposed off both the appeals by allowing the appeal filed by the plaintiff-respondent No.1 and dismissing that of the defendant No.3-appellant herein. Hence, the two regular second appeals by the defendant No.3-appellant.

4. Learned counsel for the defendant No.3-appellant would contend that the defendant No.3-appellant was a bonafide purchaser and that he had carefully checked the documents before the sale deed was executed in his favour on 03.01.2011 and having satisfied himself regarding the title, he had paid the amount. It is further the contention that no issue was framed

regarding the defendant No.3-appellant herein being a bonafide purchaser and hence the judgments and decrees passed by both the Courts deserve to be set aside.

5. *Per contra* learned counsel for the plaintiff-respondent No.1 would contend that owner of the property i.e. Narinjan Singh had no share left as he had sold more than his share in the property and hence any sale beyond his share could not be sustained in law. Since on 03.01.2011 Narinjan Singh had no share left, the question of the defendant No.3-appellant being a bonafide purchaser would not arise. It is further the contention that the ground that no issue regarding the defendant No.3-appellant being a bonafide purchaser was framed was not even raised before the First Appellate Court.

6. Heard.

7. In the present case it was held by both the Courts that Narinjan Singh had sold more than his share. Infact, the First Appellate Court has tabulated the sale deeds executed by Narinjan Singh in para 25 of the judgment. Having sold his entire share holding, Narinjan Singh had no share left qua the land which covered the sale deed dated 03.01.2011. It is trite that a person cannot transfer a better title than he himself holds. In the present case since Narinjan Singh himself did not have a good title over the suit property having already sold his share, the question of the defendant No.3-appellant herein having a better title than his vendor would not arise. The argument of learned counsel for the defendant No.3-appellant that no issue regarding the defendant No.3-appellant being a bonafide purchaser was

framed by the Trial Court also deserves to be rejected as before the First Appellate Court the said ground was neither raised nor argued.

8. In view of the above, I do not find any merits in the present appeals. No question of law, much less any substantial question of law, arises in the present cases. The appeals, being devoid of any merits, are accordingly dismissed. Pending applications, if any, also stand disposed off.

21.10.2024
jk

(ALKA SARIN)
JUDGE

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