



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2519-1987 (O&M)
RESERVED ON: 23.01.2025
PRONOUNCED ON: 01.03.2025

Harbans Kaur (Deceased) Through LRs and OthersAppellants

Versus

Harchand Singh (Deceased) Through LRs.Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Buta Singh Bairagi, Advocate for the appellants.

Mr. K.G. Chaudhary, Advocate for the respondent.

VIKRAM AGGARWAL, J

CM-4486-C-2023

Prayer in the application preferred under Order 1 Rule 10 read with Section 151 CPC is for impleading the applicant as necessary party to the present appeal.

No one put in appearance on behalf of the applicants as a result of which, the application is dismissed for non-prosecution.

RSA-2519-1987 (O&M)

The dispute in the present appeal is with regard to the land owned by one Harbans Kaur (fully described in the plaint) situated in Nathu Wala Garbi, Moga (hereinafter referred to as the 'suit land').

2. For the sake of convenience, the parties shall be referred as per their original status.

3. The brother of Harbans Kaur namely Harchand Singh (plaintiff) had preferred a suit for possession by way of specific performance of agreement to sell dated 16.06.1982 as per which, Harbans Kaur (defendant

No.1) had agreed to sell the suit land for a sum of Rs.49,470/- to her brother Harchand Singh. One Kaka Singh was impleaded as defendant No.2 and Mukhtiar Singh as defendant No.3. They were the purchasers of the suit land vide sale deed dated 22.06.1983 (Ex. D-1) and were accordingly impleaded. The suit filed by Harchand Singh was decreed by the Court of learned Sub-Judge, First Class, Moga vide judgment and decree dated 07.02.1986. The appeal preferred against the said judgment by the defendants was dismissed by the Court of learned Additional District Judge, Faridkot, vide judgment and decree dated 04.06.1987 leading to the filing of the present second appeal by them. It would be relevant to mention here that during the course of hearing, no one put appearance on behalf of the legal heirs of Harbans Kaur (appellant No.1) and Mukhtiar Singh (appellant No.3). Only the legal heirs of Kaka Singh (appellant No.2) were represented by counsel.

4. The case set up by the plaintiff was that agreement to sell as regards the suit land was executed on 16.06.1982 vide which defendant No.1 agreed to sell the suit land to the plaintiff at the rate of Rs.5,000/- per acre. A sum of Rs.10,000/- was paid as earnest money and sale deed was to be executed on or before 30.06.1983. It was the case of the plaintiff that he was ready and willing to perform his part of the contract but, defendant No.1 threatened to dispose of the suit land as a result of which, he had to file a suit for permanent injunction restraining her from alienating the suit land. Despite injunction having been granted, defendant No.1 sold a portion of the suit land to defendants No.2 and 3 vide registered sale deed 22.06.1983. Under the circumstances, the suit for specific performance was filed.

5. The defendants opposed the suit. Defendant No.1 denied that she had executed any agreement to sell with the plaintiff. It was averred that the

no occasion to agree to sell it at the rate of Rs.5,000/- per acre. The receipt of earnest money was denied. It was, however, admitted that a suit for injunction had been filed by the plaintiff restraining her from alienating the suit land but it was subsequently withdrawn after which she sold a portion of the suit land. All other averments were denied.

6. Defendants No.2 and 3 also contested the suit and filed their written statement. They raised the plea of their being *bona fide* purchasers of the suit land for consideration and without notice of the agreement to sell having been executed between the parties.

7. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated.

8. From the pleadings of the parties, following issues were framed:

- “1. Whether the defendant at No.1 agreed to sell the suit land to the plaintiff? If so on what terms? OPP**
- 2. Whether the plaintiff has been willing and ready to perform his part of contract? OPP**
- 3. Whether the defendant 2 and 3 are bona fide purchasers of land in suit for valuable consideration plaintiff? OPD**
- 4. Relief.”**

9. Parties led their respective evidence.

10. The trial Court decreed the suit vide judgment and decree dated 07.02.1986. However, the appeal filed by the defendants was dismissed, leading to the filing of the present second appeal.

11. I have heard learned counsel for the parties and have perused the record.

12. For, there is no representation on behalf of legal heirs of appellant No.1/defendant No.1 Harbans Kaur, the appeal *qua* her is dismissed for non-prosecution. Similarly, the appeal *qua* appellant No.3/defendant No.3

Mukhtiar Singh also stands dismissed for non-prosecution. Only the legal heirs of appellant No.2/defendant No.2 remain. Defendants No.2 and 3 were the subsequent purchasers of the suit land. The only argument which has been raised by learned counsel for defendant No.2 is that they were *bona fide* purchasers of the suit land for consideration without notice of any agreement and accordingly sale deed dated 22.06.1983 (Ex. D-1) was executed in their favour.

13. *Per contra*, learned counsel representing the plaintiff submitted that there is no merit in the submission made by learned counsel representing defendant No.2 because in the sale deed (Ex. D-1), there was a recital that a suit was pending between Harbans Kaur and her brother Harchand Singh on account of an agreement to sell having been executed and that the purchasers i.e. defendants No.2 and 3 would be bound by the decision. Learned counsel submits that under the circumstances, the plea of defendants No.2 and 3 being *bona fide* purchasers falls to the ground.

14. I have considered the submissions made by learned counsel for the parties.

15. As has already been noticed, for, there is no representation on behalf of appellants No.1 and 3 (defendants No.1 and 3), the appeal *qua* them stands dismissed for non-prosecution. Accordingly, the issue of the agreement to sell having been executed or the plaintiff being ready and willing to perform his part of the agreement is not being gone into.

16. The only issue which is being gone into is as to whether defendants No.2 and 3 were *bona fide* purchasers of the suit land for consideration and without notice of the agreement to sell or not.

17. Issue No.3 was framed as regards this and both Courts found that defendants No.2 and 3 were not *bona fide* purchasers of the suit land for

consideration and without notice. The sale deed was executed on 22.06.1983 by defendant No.1 in favour of defendants No.2 and 3 and was produced on record as Ex.D-1. The sale deed shows that at the time of execution/registration of the sale deed, the Sub-Registrar, Moga had recorded the statement of defendant No.1 on 22.06.1983 to the effect that a case with regard to the suit land was pending with her brother and that she would be responsible for the outcome of the suit.

18. The sale deed duly contains a recital to this effect. Defendants No.2 and 3 could not, therefore, have contended that they did not have any knowledge about the agreement to sell. The Courts noticed that both Kaka Singh and Harchand Singh belonged to the same village and, therefore, it was not acceptable that he was not having the knowledge of the agreement to sell having been executed between the plaintiff and defendant No.1. Under the circumstances, both Courts rightly held that defendants No.2 and 3 were not *bona fide* purchasers of the suit land without notice of the agreement to sell. I do not find any illegality or infirmity in the said findings warranting interference in second appeal. In fact, this is the pure finding of fact which, even otherwise, cannot be gone into in second appeal.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal in so far as appellant No.2 is concerned. The appeal is, therefore, found to be devoid of merit and is accordingly dismissed.

Pending application(s), if any, also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 01.03.2025

Prince Chawla

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No