



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

222

RSA-1759-2015 (O&M)
Date of decision: 17.02.2025

AVTAR SINGH AND ORS

..Appellants

Versus

RAJ MASIH AND ANR.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mandeep S. Bedi, Sr. Advocate
with Mr. Abhishek Thakur, Advocate
and Mr. Navraj Singh, Advocate
for the appellant.

Mr. Vipin Mahajan, Advocate
for respondent No.1.

Service upon respondent No.2 dispensed with
vide order dated 11.03.2016.

ANIL KSHETARPAL, J(Oral)

1. The defendants assail the correctness of concurrent findings of facts arrived at by the Court below while decreeing plaintiffs suit for declaration that the sale deed dated 08.10.1992 is result of impersonation. Late Sh. Rakha Masih was owner of the property, who died on 28.11.1974. He co-was owner in a joint khewat. On 08.10.1992, 18 years after his death, sale deed was executed allegedly by a dead person namely Sh. Rakha Masih in favour of Smt. Hardeep Kaur. Subsequently, Smt. Hardeep Kaur sold 9 kanal and 6 marlas land in favour of defendants vide registered sale deed dated 27.05.2004. Both the Courts have found that Sh. Rakha Masih died on 28.11.1974, hence, the sale deed dated 08.10.1992, would not confer ownership upon Smt. Hardeep Kaur and consequently appellants.



2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with scanned copy of the requisitioned record.

3. Learned Senior counsel representing the appellant has made the following two submissions:-

i. The appellants are bonafide purchasers of the property for valuable consideration.

ii. The suit filed by the plaintiff for mere declaration was not maintainable in view of proviso to Section 34 of the Specific Relief Act, 1963 (in short '1963 Act').

4. Per contra, learned counsel for the respondents submits that sale deed in favour of Smt. Hardeep Kaur was result of impersonation, hence, it is void *ab initio*. Consequently, Smt. Hardeep Kaur could not transfer the ownership in favour of the appellants. He further submits that the property is joint and the plaintiff can get actual physical possession of the property after seeking partition of the joint khewat. Hence, the suit will not be hit by proviso to Section 34 of the '1963 Act'.

5. This Court has considered the submissions of learned counsel for the parties.

6. Late Sh. Rakha Masih died on 28.11.1974. The moment he died, his property was inherited by his natural heirs. Sh. Rakha Masih was maternal grand-father of plaintiff. The mother of the plaintiff has died, hence, the moment Sh. Rakha Masih died, plaintiff's mother became owner and after her death, it is the plaintiff, who has become the owner.



7. In the facts of the present case, Section 41 of the Transfer of Property Act, 1882 (in short '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 violable 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. In **Hardev Singh Vs. Gurmail Singh (dead) by LRs (2007) 2 SCC, 404**, the Supreme Court after discussion Section 41 of the 1882 Act, has held that the following ingredients are required to be fulfilled before some one can be declared bonafide purchaser:-

(1) the vendor should be ostensible owner.

(2) the sale is for valuable consideration.

(3) he is so by express or implied consent of the actual owner is projected an owner.

(4) the transferee has taken reasonable care to ascertain the title of his vendor.

9. It is evident that the appellants purchased the property from Smt. Hardeep Kaur, who had no title. The appellants do not allege that Sh. Raj Masih (plaintiff) or her mother ever represented to the appellant that the executant of the sale deed is Sh. Rakha Masih. Hence, the defendants cannot claim protection under Section 41 of the '1882 Act'.

10. With respect to the next submission of learned Senior counsel for the appellant, it may be noted that total area of the khewat is 24 kanal. Undivided area measuring 17 kanal and 18 marlas out of joint khewat of 24



kanal was sold. The plaintiff can seek possession of specific portion after getting the same partitioned through revenue authorities. In State of Punjab and Haryana, partition of agricultural land is regulated by the Punjab Land Revenue Act, 1887, which enables Assistant Collectors to partition the land. Proviso to Section 34 of the 1963 Act debars the maintainability of the suit if consequential relief is available to the plaintiff but not prayed for. In this case, the plaintiff in absence of order of partition cannot claim possession of specific portion.

- 11. Hence, no ground to interfere is made out.
- 12. Dismissed accordingly.
- 13. All the pending miscellaneous applications, if any, are also disposed of.

February 17th, 2025

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(ANIL KSHETARPAL)
JUDGE

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