

(1996) 07 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 66 of 1981

Anup Singh and Others

APPELLANT

Vs

Smt. Bachni and Others

RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 3
Transfer of Property Act, 1882 — Section 41

Citation : (1996) 2 CivCC 441 : (1997) 1 ILR (P&H) 381 : (1996) 114 PLR 184 : (1997) 1 RCR(Civil) 26

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—The appellant in the present R.S.A. No.66 of 1981 were the transferee-defendants in the trial and they have filed the present R.S.A., which has been directed against the judgment and decree dated 25th November, 1980 passed by the Court of Shri H.S. Bakhshi, Addl. District Judge, Gurdaspur, who also dismissed the appeal of the present appellant by affirming the Judgment and decree dated 5th November 1979 passed in a suit for possession filed by Smt. Bachni alias Bachan Kaur and Smt. Giano alias Jito, daughters of Surat Singh of village Taragarh, Tehsil Batala, District Gurdaspur.

2. Brief facts of the case are that Smt. Bachni and Smt. Giano, contesting respondents Nos. 1 and 2, filed, a suit for possession of the land measuring 21 Kanals 16 Marias, fully described in the head-note of the plaint, which land at one point of time was owned by Surat Singh son of Bhagwan Singh, their father. At the time of the death of said Surat Singh, his widow Smt. Harnam Kaur, Smt. Bachni alias Bachan Kaur and Smt. Giano alias Jito, plaintiffs, Smt. Mohinder

Kaur defendant No. 2, and Surjit Singh defendant No.4, were alive, The case set up by the plaintiffs-Smt. Bachan and Smt. Jito was that their father executed a valid will in respect of his entire properties, including the suit land, on 9th April, 1973 in their favour, as they used to serve the deceased Surat Singh. On the basis of the will they are entitled to the possession, the defendants, including the present transferee-appellants, were requested several times to deliver the possession of the suit land, but they refused to do so. In the alternative, it was pleaded by the plaintiffs that in case their will is not proved, they are entitled to claim possession of one-half share of the land in dispute, on the basis of natural succession, as Suit. Harnam Kaur, their mother, died after the death of their father Surat Singh. The plaintiffs alleged that defendant No. 1 Surjit Singh, who is their brother, alleged that deceased Surat Singh executed some will in his favour, but they have denied the factum of the validity of the said will. Defendants Nos. 3 to 11 claimed that they had purchased the portion of the suit land from defendant No. 1 Surjit Singh, but this fact is denied by the plaintiffs, and as such defendants Nos. 3 to 11 are in illegal possession of the property.

3. Notice of the suit was given to the defendants. Contest was given only by defendants Nos. 3 to 11, while defendants Nos. 1 and 2 did not file any written statement in spite of service. Stand taken by defendants Nos. 3 to 11 was that land was owned by Surat Singh. He did not execute any will dated 9.4.1973 as propounded by the plaintiffs. If there is any will, that is forged and fictitious, because the relations of the plaintiffs were strained with Surat Singh. The husband of Smt. Bachni plaintiff forcibly abducted Smt. Giano alias Jito, plaintiff No.2, in the year 1970 and kept her in his house as his keep against the wishes of Surat Singh, who died of this shock. It is further alleged that after the abduction of Smt. Giano alias Jito, the deceased Surat-Singh filed an application u/s 100 Cr.P.C. for the recovery of his daughter Smt. Giano. In such circumstances the question of execution of the alleged will in favour of the plaintiffs did not arise on account of strained relations. Moreover, Surat Singh during his life-time already executed a registered valid will of his movable and immovable property situated in village Taragarh and Balewal in favour of his son Surjit Singh, defendant No. 1, and mutation of the said land was sanctioned in his favour on the basis of that registered will dated 13.12.1974. The plaintiffs filed an appeal against the said mutation in the Court of the Collector and the same was dismissed and it was held that the will relied upon by the plaintiffs is unnatural and not genuine. Defendant No.1 Surjit Singh became the owner of the property on the basis of the registered will and he sold the land in dispute to the present appellants vide registered sale deeds dated 20.8.1975, (Ex.D3). This sale deed is in favour of Amrik Singh, Kashmir Singh, Gurbhajan Singh defendants. Sale deed dated 16.2.1976 (Ex. D1) is in favour of Anup Singh and sale deed dated 18.2.1976 (Exhibit D2) is in favour of Gian Singh. These sale deed were executed for consideration. The appellants are the bona fide purchasers for consideration. It was also disputed by these appellants that Harnam Kaur, widow of Surat Singh, did not execute any will in favour of the

plaintiffs. Lastly it was pleaded that the plaintiffs had no right, title or interest in the land in dispute and, therefore, the suit of the plaintiffs was liable to be dismissed.

4. It may be mentioned here that no specific plea regarding limitation for filing the suit has been taken up by the present appellants, but being legal plea, it was agitated before me in view of Section 3 of the Limitation Act, and this aspect of the case shall also be dealt with by me in the later portion of the Judgment.

5. The pleadings of the parties gave rise to the following issues:

1. Whether Surat Singh executed a valid will dated 9.4.73 in favour of plffs? OPP.
2. Whether Surat Singh executed a valid will dated 13.12.1974 in favour of Surjit Singh defendant No.1? If so, to what effect? OPD.
3. Whether defdts. No. 3 to II are the bonafide purchasers of the suit land for consideration vide registered sale deeds dated 20.8.75, 16.2.76 and 18.2.76? OPD.
4. If issues No. 1 and 2 are not proved whether the plffs. are entitled to the alternative relief of Possession? If so to what effect? OPP.
5. Relief.

The parties led oral and documentary evidence in support of their case and on the conclusion of the trial, it was held that Surjit Singh did not execute any valid will dated 9.4.1973 in favour of the plaintiffs as alleged, and that the will relied upon by the plaintiffs is surrounded by suspicious circumstances. Issue No. 2 was decided against defendant No. 1 Surjit Singh, as he failed to produce the registered will in Court and also did not lead any evidence in support of that will regarding its due execution and registration. Under issue No.3 it was held that the present appellants were the transferees of the land mentioned in the sale deed for consideration, but they were not the bona fide purchasers of the suit land. Hence issue No.3 was partly decided in favour of the present appellants-defendants and partly against them. Under issue No.4 it was held by the trial Court that as the will dated 9.4.1973 was held to be by their father, therefore, on the basis of natural succession, the plaintiffs were entitled to one-half share of the land belonging to Surat Singh deceased, and accordingly the suit was decreed. Both the parties went in appeal and vide the impugned Judgment and decree dated 25.11.1980 the same were dismissed and aggrieved by the judgment and decree passed by the Court of Additional District Judge, Gurdaspur, the present appeal was filed by the defendants-transferees.

6. I am disposing of this appeal with the assistance of Mr. M.L. Sarin Sr. Advocate, appearing on behalf of the appellants, but no assistance has been given on behalf of Smt. Bachni and Smt. Giano, and the records of the trial Court have been perused by me with the help of Mr. Sarin.

7. As I stated above, the present appellant have been defeated in the Courts

below only on the ground of their not being the bona fide purchasers. Since this Court is not inclined to accept the reasons advanced by the Courts below, therefore, it will be useful for me to refer to the reasons verbatim for the appreciation of the controversy in dispute. In para No.25 of the judgment of the trial Court it has been held as follows:

"25. No doubt in the copies of jamabandies for the year 1971 ExD 4 and Ex.D.5 in the column of ownership Surjit Singh defendant is mentioned as owner. Apparently these entries are based on the basis of mutation which find mention in the column of Kafiati in the copy of Jamabandi Ex.P.3 and Ex.P.4. The mutation of estate of Surat Singh deceased including suit land was sanctioned on the basis of said mutation Surjit Singh was entered as owner in the revenue record, but as alleged will is not proved the mutation loses its sanctity and stands-wrongly sanctioned which leads to the conclusion that the entries in the Jamabandi Ex.D.5 and Ex.D.4 describing Surjit Singh to be sole owner are wrong. No doubt sale deed Ex.D.1 and Ex.D.2 and Ex.D.3 are duly proved to be executed by Surjit Singh. In sale deed Ex. D1 sale price is mentioned as Rs.9000/-. Endorsement of Sub Registrar on the back of it proved that Rs.9000/- were paid in cash before him at the time of registration. In sale deed Ex.D2 sale price is mentioned as Rs.9000/-and in the endorsement on the back of it is mentioned that before him Rs.9000/ were paid. In the sale deed Ex.D3 sale price is mentioned as Rs.9000/-. Endorsement of Sub Registrar on the back of it shows that Rs.3700/- were paid before him. D.W.8 Anup Singh has stated that sale deed was executed for consideration. Thus I find that these sale deeds are for consideration."

Similarly, in para No. 26, which is the relevant para for the determination of this controversy, is also reproduced as under:

"26. Defendant-vendees have not led worthwhile evidence that they made enquiries from plaintiff and Mohinder Kaur defendant, natural, heirs of Surat Singh, to the effect whether they claim their shares or not in the land held by Surat Singh. Vendee - defendants should have been aware, of rights of plaintiffs in the land in dispute. Defendants vendees even does not obtained alleged will executed by Surat Singh in favour of Surjit Singh defendant. Thus it cannot be said that defendant-vendees are bona fide purchasers. Therefore, I hold that defendants 3 to 11 are purchasers of suit land for consideration vide sale deeds dated 20.8.75., 16.2.76 and 18.2.1976. They cannot, be said to be bona fide purchasers and these sale deeds do not effect the rights of the plaintiffs in the suit land. I decide this issue accordingly."

In short the claim of the present appellants has been defeated on the ground that they did not make any inquiries from the plaintiffs and Smt. Mohinder Kaur defendant, who was the natural heir of Surjit Singh deceased as to whether they claimed their shares or not in the land owned by their father. Further, the reason given was, that vendee-defendants should have been aware of the rights of the plaintiffs and they did not even get the copy of the registered will allegedly executed by Surat Singh in favour of Surjit Singh defendant No. 1. The first

appellate Court stated while affirming the reasons of the trial Court that since the appellants resided in the same village and that the plaintiffs respondents had created a dispute about the inheritance questioning the will in favour of Surjit Singh and themselves prepounded a will (P1), it cannot be said that the present appellants, who have been held to be the transferees for consideration, were the bona fide purchasers and for this reason the benefits of Section 41 of the transfer of the property Act cannot be availed of. Also it was held by the first appellate Court that it cannot be said that the appellants were ignorant about the circumstances prevailing in the family of Surat Singh after his death. There was litigation between Surjit Singh on the one hand and the plaintiffs on the other and they were claiming the Inheritance of Surat Singh on the basis of rival wills.

8. Section 41 of the Transfer of Property Act lays down as under

"41. Transfer by ostensible owner.- Where, with the consent, express or implied, of the persons interested in immovable property, a person is ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferee 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, had acted in good faith."

A perusal of the same would show that the above provision is an exception to the general law of transfer that a person cannot pass a valid title than the one which he did not possess, but if the true owner permits another person to hold himself out as real owners a third person who deals with such property after taking reasonable care to ascertain that transferor has power to make the transfer and act in good faith, such third person acquires a good title to the property as against the true owner. In order to supplement my view, reference can be made to Salem Co-operative Central Bank Limited Vs. Commissioner of Income Tax, . The principle above stated is really a form of the equitable doctrine of estoppel. In order to succeed u/s 41 of the Transfer of Property Act, it is necessary for the transferees to establish that the person, from whom they have obtained the title, was the ostensible owner of the property and the transferees had purchased it for consideration after taking reasonable care to ascertain that the transferee had the power to make the transfer. In other words, the action on the part of the transferee must be in good faith Referring to the proved facts of the case that Surjit Singh defendant No. 1 relied upon a registered will in his favour executed by his father Surat Singh and after the death of Surat Singh mutation was sanctioned in favour of Surjit Singh on the basis of the registered will and vide well reasoned order (Ex.D.4), the Assistant Collector 1st Grade came to the conclusion that the evidence relied upon by the plaintiffs in support of their will was not reliable and made the unregistered will dated 9.4.1973 (Ex.2.1) in this case as highly doubtful and that the will has been written in suspicious circumstances. It was further held that the execution of the registered will, relied upon by Surjit Singh stood fully proved and there was no reason to disbelieve the same. The mutation was ultimately sanctioned in favour of Surjit Singh son of

Surat Singh. While dealing with an agricultural land, the prospective buyer, while adopting the criterion of reasonable care, could only consult the revenue record and he was not expected to meet each and every person of the family of one time holder of the land. It may also be mentioned here that the order of the Assistant Collector Ist Grade was not given challenge till the present appellants came into picture and for the first time that order is being disputed in the present Suit which was instituted somewhere in the year 1979 after the expiry of three years. Exhibits D5 and D6 are the Jamabandies which would show that in the column of "Ownership" the name of Surjit Singh was incorporated. In other words, Surjit Singh Was the recorded owner of the land in dispute and there is no entry in the revenue record to indicate that the estate of Surjit Singh was in dispute. If after making reasonable inquiries, the transferees have purchased the property for consideration, the principle of Section 41 of the Transfer of property Act would come into play. In Jagan Nath and Ors. v. Raja Kumar and Ors. 1988 (2) RLR 28 it was held that when a vendee accepts a transfer on faith of the enteries in record of rights in favour of his transferor, such vendee is protected u/s 41 of the transfer of Property Act, if there was no circumstances which should have led vendee to go behind revenue records and to make further inquiry. Similar view was also taken in Shamsheer Chand v. Bakhshi Mehr Chand and Ors. (1947) 49 PLR 274 (Full Bench of the Lahore High Court). Yet another Division Bench authority reported as Shrimati Ashrafi Devi v. Trilok Chand and Ors. (1964) 66 PLR 1130, can be cited in support of my conclusion that the present appellants are the bona fide transferees, where it was held that what has to be seen u/s 41 of the Transfer of Property Act is not whether proper enquiries made in connection with the ancestral nature or otherwise of certain properties but whether the transferee when dealing with an ostensible owner took reasonable care to ascertain that the transferor had power to make the transfer and had acted in good faith. Reliance can also be placed on Raghu Nath v. Mansa and Anr. (1962) 64 P.L.R. 230. The gist of all these authorities compels me to take only one conclusion that the present appellants were the bona fide transferees for consideration and they were not obliged to go to the family members of Surat Singh deceased to inquire if they intended to further precipitate the matter. The oral evidence also points to say that the present appellants relied upon the registered will in favour of defendant No. 1 Surjit Singh, which will was accepted by the Revenue authorities, by declining the claim of the plaintiffs who were relying on unregistered will (P1).

9. The reasons which have been advanced by the Courts below, to my mind, are not sound and cannot be endorsed in view of the settled position of law, as enunciated in Section 41 of the Transfer of Property Act, which has been interpreted by the various authorities of which I have made reference above. It may also be mentioned here that authority of Shamsheer Chand (*supra*) was brought to the notice of the first appellate Court, who tried to distinguish it on reasons which are not cogent and cannot be endorsed. In this view of the matter I modify the findings of the Court below on issue No. 3 and hold that the present

appellants were not only the purchasers for consideration but they were also bona fide purchasers under various registered sale deeds dated 20.8.1975, 16.2.1976 and 18.2.1976 and they derived a valid title through Surjit Singh and issue No. 3 is decided against the plaintiffs-contesting respondents.

10. This leads me to discuss whether the suit of the plaintiffs-contesting respondents was within time. Although it can be said that the plaintiffs were coming on the basis of title after the death of their father Surat Singh, yet it cannot be lost sight of the fact that in fact they were giving challenge to the registered will which was acted upon by the revenue authorities. This suit was instituted on 22.3.1978 whereas the order Exhibit D4 was passed on 17.12.1974. The plaintiffs could challenge this order within three years from the date of its passing. Thus the suit was prima facie barred by time as per Article 58 of the Limitation Act.

11. Section 3 of the Limitation Act lays down that subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. No doubt, the contesting defendants did not take up this plea of limitation nor there was any issue to that effect, but being a legal plea, could always be taken into consideration. Section 3 is mandatory and casts a duty upon the Court to dismiss the suit, if it is instituted after the period of limitation even if limitation has not been pleaded in defence. There was no waiver on the part of the present appellants and the legal plea of limitation is allowed to be taken in the second appeal as I find from the record that the appellants at no point of time abandoned the plea of limitation. Be that as it may, I have already held above under issue No.3 that the appellants are the bona fide purchasers for value, therefore, they derive good title under the various sale deeds in question and they had become the full-fledged, and owners of the property, leaving no scope for the plaintiffs to seek a declaration Or the relief of possession on the basis of the will Exhibit PI or on the basis of the natural succession, as allowed by the Courts below.

12. Resultantly, this appeal is allowed, the Judgments and decrees of the Courts below are set aside and the suit of the plaintiffs Smt. Bachni alias Bachan Kaur and Smt. Giano alias Jito is hereby dismissed as prayed for. The parties are left to bear their own costs.