
(1995) 09 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2111 of 1985

Chanan Singh and Others

APPELLANT

Vs

Smt. Salwant Kaur and Others

RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : (1996) 1 CivCC 390 : (1996) 112 PLR 276

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : Gurnam Singh, for the Appellant; A.S. Cheema and D.S. Channan, for the Respondent

Judgement

N.K. Kapoor, J.—This is plaintiffs regular second appeal against the judgment and decree of the Additional District Judge whereby the judgment and decree of the trial Court was modified to the extent that plaintiff will be entitled to the possession of the land which is not covered under the sale Exhibit D-3 to D-4.

2. Chanan Singh (since dead) filed a suit for possession of 183/556 the share of land as detailed in the heading of the plaint. As per case of the plaintiff, Sh. Nihal Singh, his grand-father, had two sons, namely, Maya Singh and Assa Singh. Maya Singh had three sons, namely, Chanan Singh, Buta Singh and Jawala Singh alias Santa Singh. Jawala Singh died on 13.6.1977. Salwant Kaur Respondent, is the daughter of Buta Singh, the other brother of the plaintiff. Jawala Singh alias Santa Singh executed a gift deed in respect of land measuring 50 Kanals 7 Marias in favour of Salwant Kaur on 15.4.1957. This gift deed was challenged by the plaintiff on the ground that it was in respect of the ancestral property and Jawala Singh alias Santa Singh was not competent to execute the gift deed. The suit was decreed vide judgment and decree dated 21.8.1958 and it was held that the gift deed in favour of Salwant Kaur shall not affect the reversionary rights of the plaintiff in one half share of 37 Kanals 16 Marias. It has further been alleged that Salwant Kaur exchanged certain land with other persons and so the plaintiff

has filed the suit in respect of the land which fell to the share of Salwant Kaur in exchange. It has further been alleged that Salwant Kaur has made further alienation in favour of defendants No.2 to 12.

3. Defendants filed written statement resisting the claim of the plaintiff on the ground that they are bona fide purchasers without notice.

4. On the pleadings of the parties, following issues were framed :-

1) Whether the plaintiffs are entitled to 183/556th share on the basis of declaratory decree dated 21.8.1958 as alleged ? OPP.

2) If issue No.1 is proved, whether defendants No. 2 to 12 are the bona fide purchasers for value and without notice ? OPD 2 to 12.

3) Whether Jawala Singh deceased had executed a valid will in favour of defendant 14? If so, its effect ? OPD No. 1.

4) Whether the suit in the present form is not maintainable ? OPD.

5) Whether the suit is within limitation ? OPP.

6) Whether the suit is vague and cannot proceed as alleged ? OPD-2 to 12.

7) Whether the present suit is barred under the principles of resjudication ? OPD 2 to 12.

8) Whether the plaintiffs are barred from filing the present suit by their own act and conduct ? OPD-2 to 12.

9) Relief.

5. Issue No. 1 was decided in favour of the plaintiff holding that he is entitled to 183/556th share on the basis of declaratory decree dated 21.8.1958. Under issue No. 2, the Court came to the conclusion that the defendants have failed to prove that they did not have notice of right of the plaintiff and so this issue was decided against the defendants No. 2 to 12. Under issue No. 3, it was held that defendant :No. 14 failed to prove that Santa Singh deceased executed a valid will in his favour, Issue No. 4 was also decided in favour of the plaintiff. Under issue No. 5, it was held that the suit is within limitation. Under issues No. 6, 7 and 8 it was held that the defendant have failed to prove these issues. Resultantly, the suit of the plaintiff was decreed.

6. Before the appellate Court, it was argued that the trial Court erred in law in holding that defendants are, not bona fide purchasers for value without notice. In fact, the defendants made bona fide enquiry in this regard and it is thereafter that a suit land was purchased by them in good faith and for consideration. The lower appellate Court found substance in this plea of the appellant-defendants and so accepted the appeal qua the shares purchased by them vide sale deed Exhibit D-3 and D-4.

7. It is this finding of the Court below which is being challenged by the learned counsel for the appellants on the ground that the same is wholly vitiated and there has been misreading of evidence by the Court below in this regard. Elaborating, the counsel agreed that the gift deed executed by Jawala Singh alias Santa Singh in favour of his daughter Salwant Kaur was successfully challenged by the plaintiff as reflected in decree dated 21.8.1958. Admittedly, the decree became final between the parties whereby reversionary right to possess the property had been upheld by the Court. Thus mere non sanctioning of mutation on account of certain intervening circumstances in the nature of consolidation of holdings in the village ought not to have been weighed with the appellate Court to decline the plaintiffs just claim on the basis of a valid decree of the Civil Court. The approach of the lower appellate Court is also faulty as mere inspection of revenue record could not be construed amounting to be acting in good faith before purchasing the property as held by the court below. Thus, the Court erred in holding that the defendant's are bona fide purchasers for value without notice. Even the authority relied upon by the lower appellate Court reported as Asharfi Devi Vs. Tirlok Chand and Others, , is not applicable as per facts of the present case. The lower appellate Court also ignored the facts that the defendants own area adjacent to the land in dispute and so had the knowledge of litigation between plaintiff and Salwant Kaur. Had they made proper enquiry before purchasing the property, it would have come to their notice. Accordingly, the judgment and decree of the lower appellate Court deserves to be set aside.

8. Learned counsel for the respondents, on the other hand, placed complete reliance upon the reasoning advanced by the lower appellant Court and contended that it is amply proved on record that the defendants are bona fide purchasers for consideration without notice. Otherwise too, this being a finding of fact and not vitiated in any manner does not call for any interference in the regular second appeal.

9. I have heard learned Counsel for the parties, perused the judgment of the Courts below as well as the documents referred to by the learned counsel during the course of their submissions. The decree upholding the reversionary right of the plaintiff to the property subject matter of the gift deed executed by his brother in favour of his daughter Salwant Kaur is not in dispute. Any such declaration by the Court enures for the benefit of the reversioners and such right crystalises after the death of the person who made such a disposition. Thus clog has been created upon the property which Jwala Singh alias Santa Singh gifted to his daughter Salwant Kaur i.e. to say that she possessed this property subject to the rights of the plaintiff as determined vide civil Court decree dated 1.8.1958. No doubt, the decree could not be reflected in the revenue record on account of consolidation of holdings in the village but that could hardly be a circumstance taking away its effect upon the rights of Salwant Kaur in any manner. Salwant Kaur could pass only such right which she possessed at the time she executed the sale deed.

10. Whether the defendants are bona fide purchasers for value has again to be examined in the context of evidence adduced by the parties. In the present case, the defendants have primarily relied upon the entries in the revenue record to prove their bona fide act. Entries of the revenue record are not documents of title. Before a person can be stated to be bona fide purchaser for value without notice it has to be proved beyond any element of doubt that such person made all reasonable enquiries to ascertain as to the powers of the transferor to make such transfer and that he acted in good faith. This particular aspect has not been dilated by the lower appellate Court. Reliance placed by the lower appellate Court upon the decision in Smt. Asharfi Devi's case (Supra), in fact, based upon the facts in that particular case as noticed in para No. 9 of the judgment which reads as under:-

"Mr. Goswami had contended that no proper enquiries were made by the aforesaid defendant who were the transferees with regard to the right, title and interest of the plaintiff in the properties left by Madan Lal. It is pointed out that admittedly defendant No. 8's son Rajinder Kumar (present appellant) had been born when the alienations were made and since he was a minor the defendants should have made proper enquiries with regard to the joint family or ancestral nature of the properties and if they had gone about like prudent man in business, they could have met the plaintiff who would have informed them about the existence of the will. This argument is somewhat far-fetched because what has to be seen u/s 41 of the Transfer of Property Act is not whether proper enquiries were 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. When Prem Chand defendant No. 8 was the undisputed son, though adopted, of Manohar Lal and in the revenue records the mutations had been affected in his favour with regard to the agricultural lands there was hardly anything which defendants 2 to 6 and defendant No. 7 had further to find out about any will left by the deceased. It is true that the will was registered but as has been pointed out by the trial Court, u/s 57(1) of the Indian Registration Act, 1908, inspection of Book No. 3 containing entries about wills is not allowed. It is only registering officer who could look into that register u/s 57(4). Thus, the defendants could not have discovered the existence of the will by making any inspection in the Registration Department.

In the statement, the plaintiff stated that after the death of Manohar Lal, she remained in possession of the property left by him and had been taking its income. It is difficult to accept that statement when the revenue entries as also the entries in the Municipal Records and the rent deeds showed that the possession was with defendants No. 8. The reasons which have been given by the trial Court together with what has been stated above leave no manner of doubt that the aforesaid defendant's were fully entitled to the benefit of Section 41 of the Transfer of Property Act and Mr. Goswami had not been able to persuade us to disagree with the view expressed by the trial Court on this point."

11. In the present case, the limited right which Smt. Satwant Kaur purchased was well known to her. It is also worth noticing that during all these years, she did not initiate any step which could in any manner cloud the rights of the plaintiff. It is only after the death of her father that she has chosen to dispose of the property (though quite mindful of her limited right in this regard) by executing sale deed in favour of the persons who are none other than neighbours in the village. Section 41 of the Transfer of Property Act only protects a person who takes a reasonable care to ascertain that the transferor had a power to make transfer and has acted in good faith. There is not an iota of evidence to suggest that they made any such enquiry or cared to ascertain the power of the vendor to dispose of the property and to what effect.

12. Accordingly, I accept the appeal, set aside the judgment and decree of the lower appellate Court and maintain the judgment and decree passed by the trial Court decreeing the suit of the plaintiff as prayed for. Keeping in view the facts of the case, the parties shall bear their own costs.