

(2011) 05 P&H CK 0235
In the Punjab And Haryana At Chandigarh
Case No : E.S.A. No. 7 of 2011 (O and M)

Gurdial Singh

APPELLANT

Vs

Ranjit Singh and Another

RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Citation : (2011) 05 P&H CK 0235

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

C.M. Nos. 5190-91-C of 2011:

1. Applications are allowed and Annexure P-3 to P-5 are taken on record, subject to all just exceptions.

C.M. No. 3817-C of 2011:

2. Allowed as prayed for.

Main Appeal:

3. Objector Gurdial Singh having failed in both the courts below has filed the instant second appeal.

4. Suit filed by Ranjit Singh - Respondent No. 1-Decree Holder (DH) against Defendant Gurbax Singh-Judgment Debtor (JD) - Respondent No. 2 herein, for confirmation of possession of 09 kanals 15 marlas land being half share of 19 kanals 10 marlas land by specific performance of the agreement to sell dated 07.04.1998 was decreed vide judgment and decree dated 03.01.2002 (Annexure P-5). Respondent No. 1 filed execution petition against Respondent No. 2 for execution of the said decree. Gurdial Singh - Appellant herein filed objections (Annexure P-1) in the said execution petition alleging that he has purchased 04

kanals 01 marla land out of suit land from Respondent No. 2-JD vide sale deed dated 20.11.1998 (Annexure P-3), but in spite thereof, he was not made party to the suit instituted by Respondent No. 1 against Respondent No. 2. It was alleged that the said decree is, therefore, not binding on the objector-Appellant. It was also pleaded that the decree could not be passed because Respondent No. 2-JD has already sold part of the suit land to the Objector, and was therefore, not owner thereof.

5. Respondent No. 1 resisted the objections by filing reply (Annexure P-2). It was averred that sale deed dated 20.11.1998 in favor of Objector is a sham transaction without consideration and is result of collusion between Objector and Respondent No. 2-JD to defeat the right of the DH. It was also pleaded that pursuant to decree dated 03.01.2002, sale deed had already been executed in favor of DH. Respondent No. 2-JD had no right to sell part of the suit land to the Objector during subsistence of agreement dated 07.04.1998 in favor of DH. The Objector had full knowledge of the agreement dated 07.04.1998 executed by Respondent No. 2 in favor of Respondent No. 1. Various other pleas were also raised.

6. Learned Executing Court i.e. learned Civil Judge (Senior Division), Kapurthala, vide impugned order dated 17.05.2010, dismissed the objections preferred by Objector Gurdial Singh. First appeal preferred by Objector against the said order has been dismissed by learned Additional District Judge, Kapurthala, vide impugned order dated 10.01.2011. Feeling aggrieved, Objector has filed the instant second appeal.

7. I have heard learned Counsel for the Appellant and perused the case file.

8. Learned Counsel for the Objector-Appellant vehemently contended that part of the suit land had been sold in favor of Objector-Appellant long before the filing of the suit, but in spite thereof, the Objector-Appellant was not imp leded as party to the suit. However, merely on this ground, the decree passed in favor of Respondent No. 1 cannot be defeated. Agreement in favor of Respondent No. 1 executed by Respondent No. 2 is dated 07.04.1998, whereas sale deed executed by Respondent No. 2 in favor of Objector-Appellant is dated 20.11.1998 i.e. long after the execution of the agreement. Consequently, the Objector-Appellant, deriving title through the Respondent-JD, is bound by the agreement. It is correct that the Objector should have been imp leded as party to the suit having purchased part of the suit land before filing of the suit. However, possibly, Plaintiff Respondent No. 1 might not be aware of the said sale, and therefore, the Objector was not imp leded as party to the suit. Nevertheless, objections preferred by the Appellant-Objector have since been decided after obtaining pleadings of both the parties and after recording evidence and claim of the Objector has since been adjudicated upon in the execution petition.

9. It is significant to notice that the Objector in his objections, did not even plead himself to be bona fide purchaser of the part of the suit land for valuable

consideration nor it is so proved. The Objector-Appellant belongs to the Village of Respondent No. 2-JD and also belongs to his caste and resides in the same locality and in the vicinity of Respondent No. 2-JD. In view of these cumulative circumstances, it cannot be said that Objector-Appellant was not aware of the agreement dated 07.04.1998 executed by Respondent No. 2 in favor of Respondent No. 1. Consequently, Appellant cannot be said to be bona fide purchaser of the part of the suit land. No part of the sale consideration was paid by the Objector-Appellant to Respondent No. 2-JD before the Sub-Registrar. Moreover, according to agreement dated 07.04.1998, possession of the suit land stood delivered by Respondent No. 2 to Respondent No. 1. For this added reason also, Appellant-Objector could not be unaware of agreement dated 07.04.1998 executed by Respondent No. 2 in favor of Respondent No. 1. For all these reasons, the Objector-Appellant cannot be said to be bona fide purchaser of the suit land, and therefore, Objector-Appellant is also bound by the agreement dated 07.04.1998 executed by Respondent No. 2 in favor of Respondent No. 1 and is consequently bound by decree dated 03.01.2002 passed in favor of Respondent No. 1 against Respondent No. 2.

10. For the reasons aforesaid, I find no merit in the instant second appeal, which is accordingly dismissed in limine.