
(2010) 08 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3013 of 2010

Hazari Lal

APPELLANT

Vs

Krishna Devi and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2010) 08 P&H CK 0194

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Plaintiff Hazari Lal, having lost in both the courts below, is in second appeal.

2. Suit plot No. 124, Sector 15, Panchkula was allotted to plaintiff's father Banta Prasad by Haryana Urban Development Authority (HUDA) vide letter dated 03.10.1978. Banta Prasad died on 29.05.1982 leaving behind his mother Gomti Devi, wife Krishna Devi - defendant Nos. 1 and five sons i.e. plaintiff and defendants Nos. 2 to 5 as his legal heirs. Gomti Devi also died in July 1995. After death of Banta Prasad, at the instance of defendants Nos. 1 to 5, plaintiff affirmed an affidavit that he had no objection if the amount lying with PGI (employer of Banta Prasad) was allowed to be withdrawn by defendant No. 1 only. The said affidavit was affirmed on the assurance that the said amount after withdrawal would be distributed equally among all the legal heirs, but the amount was not so distributed. On the death of Banta Prasad, all his aforesaid legal heirs including the plaintiff, became owners of the suit plot and other property of Banta Prasad. However, defendant No. 1 has sold the suit plot to defendant No. 6. The said transfer/sale is illegal as defendant No. 1 alone was not owner of the suit plot. The plaintiff sought declaration that he is owner of the suit plot to the extent of his share and that sale of the suit plot by defendant No. 1 to defendant No. 6 by executing sale deed and thereafter re-allotment/transfer of the said plot by HUDA - defendant No. 7 to defendant No. 6 are null and void.

The plaintiff also sought separate possession of his share by partition. Injunction was also claimed.

3. Defendant No. 1 pleaded that Banta Prasad had executed Will in her favour and consequently, she alone became owner of the suit plot. Instalments of balance price of the suit plot and other dues were paid by her alone. All other legal heirs of Banta Prasad had also been treating defendant No. 1 to be exclusive owner of the suit plot. Her name was also recorded as such by HUDA. Suit was also alleged to be time barred. Defendants Nos. 2 to 5 also separately pleaded the same version. Defendant No. 6 also separately took the same stand and further pleaded that he has purchased the suit plot for consideration after proper verification.

4. Learned Civil Judge (Junior Division), Panchkula, vide judgment and decree dated 28.07.009, dismissed the plaintiffs suit. First appeal preferred by the plaintiff has been dismissed by learned Additional District Judge, Panchkula, vide judgment and decree dated 07.05.2010. Feeling aggrieved, plaintiff has preferred the instant second appeal.

5. I have heard learned Counsel for the appellant and perused the case file.

6. Plaintiffs father died in the year 1982. Suit plot was transferred in the name of defendant No. 1 in the records of HUDA in the year 1985. The instant suit was instituted in the year 1998. Throughout this period for 16 years, since after the death of plaintiffs father Banta Prasad and for 13 years since after the plot was transferred by HUDA to defendant No. 1, the plaintiff never challenged the same. The plaintiffs claim that he learnt of the said transfer in favour of defendant No. 1 only in December 1996 cannot be accepted because the plaintiff, after the death of his father, would have taken steps for transfer of the plot in favour of all the heirs if the plaintiff had not agreed to transfer the plot in favour of defendant No. 1 alone. Moreover, plaintiff affirmed affidavit affirming that he had no objection if the plot was transferred exclusively in favour of defendant No. 1.

7. Learned Counsel for the appellant contended that contents of the affidavit depict that the same was affirmed by defendant No. 1 and not by the plaintiff. The affidavit may not be properly drafted, but the substance of the affidavit is that there was no objection to the transfer of the plot in favour of defendant No. 1 alone and the said affidavit was affirmed by the plaintiff and not by defendant No. 1.

8. Learned Counsel for the appellant also contended that defendant No. 1 was holding the plot on behalf of all heirs of Banta Prasad. The contention cannot be accepted. No such plea has even been taken in the plaint nor there is any evidence to substantiate the same. On the other hand, defendant No. 1 alone was holding the plot for herself and she even deposited the dues of the plot. The plaintiff admitted that he and his brothers had affirmed the affidavit. He also admitted his signatures on the affidavit, whereby he and his brothers i.e. defendants Nos. 2 to 5 affirmed that they had no objection to the transfer the

plot in favour of defendant No. 1. The plaintiff's plea that the said affidavit was obtained by fraud is not substantiated by plaintiff's own self-serving statement. The suit is also barred by limitation as it has been filed 16 years after the death of Banta Prasad and 13 years after the transfer of the plot in favour of defendant No. 1 alone.

9. In addition to the aforesaid, defendant No. 6 is also bona fide purchaser of the suit plot for consideration. Admittedly, the suit plot was standing in the name of defendant No. 1 alone since March 1985 in the records of HUDA. Defendant No. 6 purchased the same in the year 1996 after verifying the ownership of the plot from the records of HUDA. Consequently, defendant No. 6 is bona fide purchaser of suit plot for consideration.

10. There is concurrent finding of fact against the plaintiff-appellant. The said finding is based on proper appreciation of evidence and cannot be said to be perverse or illegal warranting interference in second appeal. No question of law, much less substantial question of law, arises for determination in this appeal. The appeal is bereft of any merit and is accordingly dismissed in limine.