
(2012) 05 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 877 of 1991 and C.W.P. No. 1753 of 1986

Mohinder Singh (died)

APPELLANT

Vs

Banta Singh and Others
 Balwinder Singh and Others
Vs Additional Director Consolidation of Holdings and Others

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 30, 42
Transfer of Property Act, 1882 — Section 30, 41

Citation : (2013) 1 RCR(Civil) 68(1)

Hon'ble Judges : Rakesh Kumar Jain, J;Rajive Bhalla, J

Bench : Division Bench

Advocate : Amarjit Markan in R.S.A. No. 877 of 1991 and Mr. Kanwaljit Singh, with Mr. Chirag Wadhwa in CWP No. 1753 of 1986, for the Appellant; Avnish Mittal, Advocate in R.S.A. No. 877 of 1991 and for Respondent No. 3 to 5 in CWP No. 1753 of 1986, Mr. Amit Chaudhary, DAG, Punjab and Mr. Amarjit Markan, Advocate for the Respondent No. 2 in CWP No. 1753 of 1986, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of CWP No. 1753 of 1986 titled as Balwinder Singh and others v. Additional Director Consolidation of Holdings Punjab and others in which order dated 18.12.1985 passed by respondent No. 1 has been challenged and the writ petition was admitted on 9.4.1986, whereas RSA No. 877 of 1991 titled as Mohinder Singh (died) through his LRs v. Banta Singh and others was admitted on 29.4.1991 and was ordered to be heard with CWP No. 1753 of 1986. The brief facts of the case are that one Wazira Singh s/o Premi was co-sharer to the extent of half share in land measuring 70 bighas 11 biswas in village Khadial whereas the other half share was owned by Chhota Singh, Nihal Singh, Amar Singh, Chanan Singh and Kirpal Singh. The consolidation proceedings in village Khadial took place in the year 1961 and both the branches of Premi namely, Wazira Singh and Hira Singh, were allotted the

following land:

182//4 & 7, 198//14, 17, 18, 23 & 24, 256//468, 288//31, 256//446, 287//63, 198//10,-11, 12, 13, 15 min, 19 min, 7, 8, 9, 16, 25, 15 min, 182//5 and 198/14.

2. After the consolidation was over, Wazira Singh s/o Premi sold land measuring 53 kanals 7 marlas to Mohinder Singh s/o Nihal Singh (who is plaintiff in the RSA and respondent No. 2 in the writ petition) falling in Rectangle/Killa No. 182//4 & 7, 198//714, 17, 18, 23 & 24, 256//468, 288//31 for a sum of Rs. 7,000/- by way of registered sale deed dated 21.6.1965.

3. However, by virtue of an order passed by this Court, consolidation proceedings were started afresh in which the land mentioned below was allotted, in lieu of the land allotted to Wazira Singh and the heirs of his brother Hira Singh. The new numbers are as under:

1411//18, 161//23/2, 24/1, 182//4, 5/1, 197//5/3, 6, 7/1, 14 & 15, 198//9/2, 10, 11, 12, 13 & 18 and 182//26.

4. After fresh consolidation and allotment of new numbers, Mohinder Singh filed an application u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short "the Act") before Additional Director Consolidation Holdings, Punjab on the basis of a registered sale deed executed by Wazira Singh to the extent of land measuring 53 kanals 7 marlas out of his share. The said application was allowed by the Additional Director Consolidation on 18.12.1985 and in lieu of the old numbers, which have been sold by Wazira Singh before the consolidation proceeding was revoked, new numbers were allotted in terms of the re-consolidation. Whereas in the year 1984, Mai Singh s/o Bhajan Singh, Nand Singh s/o Wazira and Munna @ Nand Kaur daughter of Wazira Singh, being the legal heirs of Wazira Singh, sold their half share of 97 kanals 10 marlas of land including the land which was already sold by Wazira Singh to Mohinder Singh in the year 1965, to Baljit Singh, Ran Singh @ Bholi and Balwinder Singh sons of Banta, all residents of village Khadial for an alleged sale consideration of Rs. 42000/- on 30.7.1984. Consequently, CWP No. 1753 of 1986 is filed by the vendees of the legal heirs of Wazira Singh challenging the order of the Additional Director Consolidation of Holdings, Punjab dated 18.12.1985. Mohinder Singh son of Nihal Singh, who had earlier purchased 57 kanals 7 marlas of land from Wazira Singh filed a suit for declaration and injunction in order to establish his title and challenged the alleged sale deed dated 30.7.1984 executed by legal heirs of Wazira Singh to subsequent vendees Baljit Singh, Ran Singh and Balwinder Singh. It is pertinent to mention that the suit filed by Mohinder Singh was dismissed by both the Courts below as a result of which he had filed Regular Second Appeal No. 877 of 1991. In this background, both the CWP No. 1753 of 1986 and RSA No. 877 of 1991 were ordered to be heard together by this Court.

5. Since, it is agreed between the parties that fate of CWP No. 1753 of 1986 would depend upon the decision of RSA No. 877 of 1991 therefore, it has been

found to be expedient to deal with question of title in the property in dispute which is involved in the civil suit.

6. Counsel for the appellant in the second appeal has submitted that though the learned Appellate Authority had reversed the finding of the learned trial Court with regard to the applicability of Section 30 of the Act, in view of the decision of this Court, in the case of *Siri Kishan and Others Vs. Mem Chand*, on the ground that the transferee can enforce the transaction against the transferor and can follow the land allotted to the transferor during consolidation, yet the suit has been dismissed on the ground that the subsequent vendees of the legal heirs of Wazira Singh are protected u/s 41 of the Transfer of Property Act, 1882 (for short "the 1882 Act") being bona fide purchasers. It is contended that if the first sale deed dated 21.6.1965 (Ex. P1) executed by Wazira Singh has been accepted as valid then how can the subsequent sale deed dated 30.7.1984 (Ex. D1) by his heirs in favour of subsequent vendees be held to be valid because they were left with no right in the property in dispute which could be transferred. In this regard, he has referred to the questions of law which were framed by way of his separate application, which are as follows:

(i) whether in the face of validity of registered sale deed dated 21.6.1965 (Ex. P1) by Wazira Singh in favour of Mohinder Singh, subsequent sale deed dated 30.7.1984 (Ex. D1) by his heirs after his death in favour of subsequent vendees can be held to be valid?

(ii) whether the subsequent vendees can seek protection u/s 41 of the 1882 Act from the persons of the earlier sale deed dated 21.6.1965, which has been executed by the same vendor?

7. In respect of the first question of law, counsel for the appellant in the second appeal has relied upon a judgment of the Supreme Court in the case of *Atla Sidda Reddy Vs. Busi Subba Reddy and Others*,) and in respect of the second question of law, has relied upon various decisions of this Court in the case of *Atla Sidda Reddy Vs. Busi Subba Reddy and Others*, "*Amrik Singh v. Tarlok Singh and others*" 2004 (3) RCR (Civil) 447 , *Jasvir Singh Vs. Mohan Singh and Others*,

8. On the other hand, counsel for the subsequent vendee has submitted that the property in dispute was purchased after consulting the revenue record in which Mohinder Singh was not recorded as the owner. The sale deed Ex. D1 is against the valuable consideration of Rs. 42,000/- out of which Rs. 15,000/- was paid before the Sub Registrar, Rs. 20,000/- was paid at home and Rs. 7,000/- was spent for purchase of Stamp paper and registration charges.

9. It is also submitted that if the sale deed Ex. P1 was executed in the year 1965 by Wazira Singh in favour of plaintiff Mohinder Singh, then why he remained silent for more than 19 years between 1965 to 1984 till he filed the present suit for the purpose of getting his name incorporated in the revenue record.

10. We have heard both the counsel for the parties and are of the view that the

appeal is meritorious as substantial questions of law are involved therein.

11. Indisputably, the parties to the lis belong to the same village. Plaintiff Mohinder Singh is none-else than the son of Nihal Singh s/o Hira Singh and as a matter of fact, nephew of Bhajan Singh, Nand Singh and Munna @ Nand Kaur, who have sold the entire share of Wazira Singh, on 30.7.1984, to Baljit Singh, Ran Singh and Balwinder Singh, after his death on 4.2.1984. The Lower Appellate Court has also accepted the genuineness of sale deed Ex. P1 dated 21.6.1965 executed by Wazira Singh in favour of Mohinder Singh, of the land measuring 57 kanals 7 marlas out of total half share of 97 kanals 10 marlas. It is, therefore, apparent that on 30.7.1984, when the sale deed Ex. D1 was executed, the heirs of Wazira Singh were having no transferable rights in the land measuring 57 kanals 7 marlas, which had already been transferred by their father, for a valuable consideration, to Mohinder Singh. In this regard, the Supreme Court in the case of Alta Sidda Reddy (Supra) has held that if there are two sale-deeds, then the sale deed prior in time shall prevail and at the time of execution of second sale deed, the vendor would not have any right or title in the property which can clothe the subsequent purchaser with any right or title as no one can transfer a better title than he possess. In view thereof, the first question which has been raised by counsel for the appellant is decided in his favour.

12. In respect of the second question of the bona fide purchaser, it would be relevant to refer to Section 41 of the 1882 Act, which is reproduced as under:

Transfer by ostensible owner:

Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable 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.

13. According to the aforesaid provision, a person would be ostensible owner if he had express or implied consent of the persons interested in immoveable property and such transfer shall not be held to be voidable on the ground that the transferor had no authority to make it provided that the transferee had taken due care and acted in good faith while ascertaining the power of the transferor to transfer the said property.

14. In this regard, it has been held in the case of Amrik Singh (Supra) that it is not suffice for the purchaser to inspect the revenue record but he is also suppose to enquire from the locality about the title of the vendor. It was observed that subsequent vendee is a resident of the same village and such transaction of sale are generally known to the inhabitants of the village. In this regard, reference has been made to the decision of the Supreme Court in the case of Dr. Govinddas and Another Vs. Shrimati Shantibai and Others,

14A. We have already noticed that the plaintiff Mohinder Singh is the son of Nihal Singh s/o Hira Singh and is related to Wazira Singh as his grandson and as nephew to the heirs of Wazira Singh. If the land measuring 53 kanals 7 marlas was sold by Wazira Singh to Mohinder Singh, it cannot be believed that it was not within the knowledge of his heirs, who had sold the land of Mohinder Singh to subsequent vendees, who happened to be the resident of same village. In view thereof, we are of the considered opinion that the subsequent vendees cannot be allowed to take the plea of Section 41 of the 1882 Act and thus are not the bona fide purchasers.

15. Consequently, the appeal is hereby allowed and the judgment and decree of the Courts below are set aside. Since, we have upheld the sale deed Ex. P1 dated 21.6.1965 in the regular second appeal, therefore, we do not find any merit in CWP No. 1753 of 1986 in which order of the Consolidation Officer and the Director Consolidation has been challenged only on the ground of Section 30 of the Act which has already been referred by the First Appellate Court in the civil Suit. Hence, the writ petition is found to be without any merit and the same is hereby dismissed.

A photocopy of this order be placed on the file of connected case.