
(1992) 02 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 341 of 1979

Nazar Singh and others

APPELLANT

Vs

Nand Lal and others

RESPONDENT

Date of Decision : 13-02-1992

Acts Referred:

Citation : (1992) 1 CurLJ 457 : (1992) PLJ 175 : (1992) 1 RRR 514

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

Advocate : Mr. Rajiv Vij, Advocate, Mr. Anand Sarup, Senior Advocate,
Advocates for appearing Parties

Judgement

N.K. Kapoor, J.

1. This is defendants' appeal against the judgment and decree of the Additional District Judge, Karnal whereby the appeal filed against the judgment and decree of the trial court was dismissed. Briefly put the plaintiff purchased 9 bighas 11 biswas representing 1/9th share of 85 bighas 16 biswas situate in village Adhoya, tehsil Kaithal for a sum of Rs. 500/ from Nand Lal vide registered sale deed dated 17.7.1958. It is further case of the plaintiff that on account of consolidation of holdings in the village land measuring 22 kanals 8 marlas comprised in Khewat No. 21 Khatoni No. 25, square no. 48, killa No. 23, square No. 64, killa No. 3/1, 3/2 and 2/2, square No. 93, killa No. 8/3 as per jamabandi for the year 195758 was allotted in lieu of the above said land. Since mutation of land purchased had not been sanctioned in favour of the plaintiffs, the consolidation authorities allotted the land as detailed above in the name of Nand Lal. It is further stated by the plaintiff that Nand Lal taking undue advantage of this allotment in his favour sold the land alongwith some other property vide registered sale deed dated 5.1.1965 to defendant No. 2. This sale in favour of defendant No. 2 was thus alleged to be wholly, illegal, void and ineffective qua the rights of the plaintiffs and hence suit for declaration and possession.

2. Nand Lal, defendant No. 1, was given up by the plaintiff as unnecessary party. Defendant No. 2 put in appearance and filed written statement. On the pleadings

of the parties, the following issues were framed:

1. Whether Nand Lal is a necessary party to the suit ? If so, its effect ? OPD
2. Whether the plaintiff is the owner of the suit land ? OPP
3. Whether Nazar Singh is a bonafide purchaser for valuable consideration without notice. If so, its effect ? OPP
4. Whether the land described in para 2 of the plaint was allotted in lieu of land described in para No. 1 of the plaint ? OPP
5. Relief.

Trial court decided issues No. 1 to 4 in favour of the plaintiff and against the defendants. Thus in view of the findings of the trial court on the above mentioned issues, the suit of the plaintiff was decreed with costs. Before the lower appellate court, the matter was once again examined on facts as well as on law. In fact the appellant confined his contest in respect of issue No. 3 alone. Much emphasis was made by the learned counsel for the appellant that despite the registered sale deed Ex. P1 dated 17.7.1958 the plaintiff did not take any step during all these years to get his name recorded in revenue papers. He further urged that even during the consolidation of holdings proceedings, the land was shown to be owned and possessed by Nand Lal which gave the impression that in fact Nand Lal is an owner of the suit land and in this way, the land purchased by the appellant is fully protected under section 41 of the Transfer of Property Act. The appellant further contended that before purchasing the suit land, he enquired from Patwari Halqa as to the ownership of the land in question and also in view of the fact that the revenue record does not make mentioned of the name of the plaintiff, the Act of purchasing the suit land by the appellant was indeed bona fide and in this way the sale in his favour is protected.

3. The lower appellate court on the basis of evidence on record came to the conclusion that the appellant cannot take shelter under section 41 of the Transfer of Property Act. The lower appellate court observed that neither the Patwari nor any official of the Registration Office has been produced in the witness box from the side of the appellant to substantiate the plea of the appellant in this regard. The lower appellate court further observed that at no time the plaintiff in any way gave an impression to the appellant that Nand Lal was an ostensible owner. Thus finding no merit in the contention raised by appellant, the appeal was dismissed.

4. Before me, the learned counsel for the appellant has once again highlighted points which were canvassed before the learned appellate Court, namely, that despite the sale in favour of the plaintiff vide registered sale deed dated 17.7.1958, revenue entries continue to record Nand Lal as owner in possession before consolidation of Holdings took place in the village and even during consolidation proceedings. The land sold to the plaintiff was taken in the common pool of Nand Lal and in lieu of the land sold vide sale deed dated 17.7.1958, an

area measuring 22 kanals 8 marlas was allotted to Nand Lal. Thus, on the basis of the entries in the revenue papers and for the reasons that Nand Lal was shown to be in possession of the suit land, the appellant bonafide believed that Nand Lal is in fact the owner of the property and so purchased it vide registered sale deed dated 5.1.1965. In support of his contention, the learned counsel relied upon judgment reported as 1987 Punjab Law Journal 646.

5. The learned counsel for the respondents, however, contends that finding of the court below as to the presence or absence of good faith on the part of the transferee is in fact a finding of fact and as such, cannot be matter of adjudication in the regular second appeal. The counsel further submitted that even otherwise the evidence led by the vendeeappellant does not come up to the test laid down under section 41 of the Transfer of Property Act. It was further urged that registration of a sale deed is a notice to the public. There is no evidence on record that the vendee examined the record for the last few years so as to ascertain whether the suit land has been sold earlier by any registered sale deed.

6. On careful examination of the contentions raised, I find the appeal without any merit. Mere revenue record is not a substitute for a title deed. At best, such a record has a presumptive evidence but by itself cannot be deemed to be title deed. Section 41 of the Transfer of Property Act is for the protection of careful men and not for persons who are in different or say credulous. In the present case, all that has been stated by the appellant is that he enquired about the suit property from the Patwari and from the Clerk of Registration Office. Both of them, however have not been produced in evidence and this verbal assertion of the appellant has not been accepted by both the courts and rightly so. In a Division bench case reported as Dwarka Das and others versus Rang Lal and others, 1953 Punjab Law Reporter 132, the court examined the matter and held "where there are registered deeds of sale it is not a sufficient compliance with the provisions of section 41 of the Transfer of Property Act if a person merely looks at the revenue records and does not go any further." Besides, section 3 of the Transfer of Property Act gives the meaning of words a person is said to have Notice" of a fact as follows :

"A person is said to have notice, of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation 1. Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of or share or interest in such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one subdistrict, or where the registered instrument has been registered under subsection (2) of Section 30 of the Indian Registration Act, 1908 (XVI of 1908 from the earliest date on which any memorandum of such registered instrument has been filed by any subregistrar within whose subdistrict

any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

x x x x x

In this view of the matter, there is no escape from the conclusion that the appellant's conduct cannot be termed bonafide. Infact he had been negligent in not examine the title deeds from the office of the SubRegistrar to find out as to who in fact was the owner of the suit land. The judgment cited by the learned counsel for the appellant is not applicable on the facts of the present case. Resultantly, finding no merit in the appeal, the same is dismissed. The parties to bear their own costs.