IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.4913 of 2018 (O&M)
Date of Decision: 09.01.2020

Nardev Singh

... Appellant

Versus

Balwant Kaur @ Kulwant Kaur and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Rupinder Kaur Thind, Advocate,
for the appellant.

ARUN MONGA, J.(ORAL)

CM-13335-C-2019

Allowed, as prayed for.

MAIN CASE (O&M)

1. By way of regular second appeal under challenge herein is a judgment of trial Court affirmed by first appellate court, whereby the appellant herein has suffered a decree of declaration holding that sale deed No. 2282 dated 17.12.2009 executed by defendant No.2 (respondent No.2 herein) in favour of defendant No.1 (appellant herein) is illegal, null and void to the extent of 1/3rd share of plaintiff (respondent No.1 herein) in the suit land. As a result thereof, mutation No. 2983 has also been declared as illegal, null and void. Consequently, the Courts below have permanently restrained the defendants in civil suit from alienating 1/3rd share of the plaintiff in the suit land in any manner.

2. The controversy relates to agricultural land measuring 51 Kanal and 3 Marlas located at Village Biroke Murd, Tehsil Budlada, District Mansa, being the suit property. The said land was in the name of deceased Hardam Singh who died intestate leaving behind the plaintiff (daughter) and defendant No.2 (son) and defendant No.3 (second daughter). An earlier suit was preferred by Balwant Kaur @ Kulwant Kaur seeking declaration that upon the death of her father Hardam Singh, the plaintiff and defendants No.2 and 3 inherited the suit property in equal shares by operation of law of succession. However, before the trial concluded, defendant No.2 got the entire land mutated in his name by virtue of mutation of inheritance of Hardam Singh on 19.02.1986. Aforesaid earlier suit was decreed in favour of respondent No.1 herein (plaintiff) vide judgment and decree dated 31.01.1994 whereby she was declared as owner to the extent of 1/3rd share in the suit land. Feeling aggrieved against the said judgment and decree, son preferred an appeal, which was dismissed by the first Appellate Court. The regular second appeal filed before this Court was also dismissed, upholding the judgment passed by the trial Court, as affirmed by the first appellate Court on 12.10.1999. Notwithstanding this, the son did not disclose the previous litigation and the finality thereof, wherein it was declared that he is owner to the extent of only 1/3rd share of the suit land. He surreptitiously executed sale deed dated 17.12.2009 in favour of appellant herein qua the entire suit land claiming himself to be exclusive owner of the same. After the said sale deed, appellant

proclaimed himself to be the owner of the entire suit land as against the earlier declaration, vide judgment and decree dated 31.01.1994 whereby both the daughters and the son of deceased Hardam Singh were held owner to the extent of 1/3rd in the suit land in equal shares. This resulted in filing of civil suit No.1676 of 2013 by one of the daughters of Hardam Singh which was decreed in her favour, leading to the present second appeal.

3. I have heard learned counsel for the appellant and have gone through the record appended with the appeal herein.

4. The main thrust of the argument raised on behalf of the appellant is that the appellant is bona-fide purchaser. Learned counsel for the appellant argued that being a vendee the appellant made appropriate inquiry and checked the revenue records to ascertain whether the vendor/transferrer of the land was the recorded owner or not and having satisfied himself, he purchased the same from the son of deceased Hardam Singh. The appellant, therefore, acted in good faith after taking reasonable care to ascertain that the transferrer/vendor of the land had the power to make the transfer as contemplated under Section 41 of the Transfer of Property Act, 1882. In support of her contentions, learned counsel for the appellant has also relied upon a judgment rendered by this Court in case titled as, "Jagan Nath v. Raj Kumar and others" 1986 (2) PLR 101. Speaking for this Court, J.V.Gupta, J as his Lordship then was, made the following observations :

> "*Apart from the above, as regards the facts of the present case, the mutation in favour of Kewal Krishan and Basheshar Nath, defendants, with respect to the suit land was entered in the*

> *year 1926, and it continued as such till the year 1959, i.e., for more than three decades when the consolidation of holdings again took place in the village. At the time, in view of the entries existing in the revenue record in favour of the defendants, the land was allotted to them. Thereafter, the land was sold in the year 1959 to Puran Chand who subsequently sold the same to defendants Nos 4 and 5. During all this period, the plaintiffs never cared to take any steps as to get the entries corrected. Not only that, the plaintiffs were never found to be in possession of the suit land during the said period. The mere fact that the suit land was shown as a pond does not advance the case of the plaintiffs in any manner; rather it shows that neither they were shown as the owners in the revenue record, nor they were in possession of the suit land. In these circumstances, there was no occasion for the transferees to make any further enquiries and to go behind the entries in the revenue record in favour of their vendor. A vendee who accepts a transfer on the faith of the entries in the record of rights in favour of his transferrer is protected under section 41 of the Act if there was no circumstance which should have led him to go behind the revenue records and to make further enquiry. In the present case, was any occasion for the transferees to go behind the revenue record and to make further enquiries. Earlier, the mutation was sanctioned on the basis of the decree based on the compromise. Later on, in the Jamabandis, the transferor was shown as the owner throughout. The possession of the suit land was duly transferred in favour of the vendees-defendants. From these facts, it has been rightly concluded by the Courts below that there was no circumstance which could have led the transferees to go behind the revenue entries and to make further enquiries. The authorities relied upon by the learned counsel for the appellants are clearly distinguishable and have no applicability to the facts of the present case."*

5. While I am in agreement with the above observations but the same do not advance the cause of the appellant in the background of the facts narrated hereinabove. The son of deceased Hardam Singh was fully aware of having suffered a decree of declaration that he was merely owner of only 1/3rd share

in the suit land and, therefore, having concealed the same from the vendee clearly seems to have committed a fraud not only on vendee but also on his sisters. The vendee cannot take refuge under the garb of being a bona fide purchaser and cannot take advantage of the concealment/fraud committed by his vendor. It was open to the appellant/vendee to take action against the vendor/son of deceased Hardam Singh. Be that as it may, the decree dated 31.01.1994 declaring that the son and the daughters of deceased Hardam Singh are owner to the extent of 1/3rd share each in the suit land has since attained finality. Vendor was, therefore, clearly not the owner of the entire suit land and could not have passed on a valid title for the entire suit land in favour of the vendee. It is settled position that what is not owned by a person cannot be sold and any sale deed and/or mutation executed qua the land of which vendor is not a owner, does not pass any valid title on the vendee.

6. In view of my discussion above and the reasons contained therein, no ground to interfere is made out.

7. The appeal is accordingly dismissed.

(ARUN MONGA)
JUDGE

09.01.2020
Sonu Kumar

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No