

RSA No.2 of 1988

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2 of 1988

Date of decision 15 .9.2011.

PUNJAB AND HARYANA HIGH COURT

Bachan Singh and others

..... Appellants

versus

Bhajan Singh and others

..... Respondents.

CORAM : HON'BLE MR. JUSTICE K.C.PURI

Present : Mr. M.L.Sarin, Senior Advocate with
Mr. Divya Sodhi, Advocate for the appellants.

None for respondents.

K.C.PURI . J.

Bachan Singh and other defendants-appellants have directed
the present regular second appeal against the judgment and decree dated

1987 passed by Mr. A.B.Singh Wasu, Additional District Judge,
Chandigarh vide which the appeal preferred by them against the judgment and



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decree dated 20.1.1987 passed by Shri N.S.Saini, Senior Sub Judge, Amritsar was dismissed.

2. The case of the plaintiffs in brief is that previously Sadhu Singh son of Teja Singh was the owner of the suit land. He had mortgaged the suit property for a sum of Rs.4500/- with Tara Singh father of the defendants vide mortgage deed dated 30.1.1970. Later on, said Sadhu Singh sold the land in dispute alongwith some other property for Rs.27,306/- vide sale deed executed on 8.2.1973 wherein the mortgage amount was duly adjusted in the sale price. Due to certain reasons the registration of the sale deed could not take place on the day of execution while subsequently it became a matter of dispute which was finally decided by the Registrar, Amritsar, in favour of the plaintiffs on 19.9.1975 and as a result of which the registration of the document took place on 10.10.1975. In this background, it was further averred in the plaint that despite the said pending dispute of registration, the defendants got another sale deed executed collusively from said Sadhu Singh on 14.11.1973 because of which the same was ineffective qua the rights of the plaintiffs and therefore, the present suit for redemption has been filed.

3. On put to notice, the defendants, on the other hand, admitted the factum of mortgage but controverted the claim of the plaintiffs and set up a bona-fide transaction of sale in their favour, besides raising legal objections of limitation, maintainability, jurisdiction and res judicata. They ultimately prayed for dismissal of the suit of the plaintiffs with

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4. Plaintiffs filed replication and they denied all the averments of the written statements and reiterated their stand taken in the plaint.

5. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled to redeem the land and to get its possession?OPP
2. Whether the present suit is barred by limitation?OPD
3. Whether the suit is maintainable in the present form?OPD
4. Whether the sale deed dated 8.2.1973 is void, illegal and not binding on the defendants?OPD
- 4-A. Whether defendants are bonafide purchasers of suit property for consideration ?OPD
5. Whether the suit for redemption is not maintainable in view of the fact that the mutation of the land has been refused to enter in the name of the plaintiffs?OPD
6. Whether the civil court has no jurisdiction to try this suit ? OPD
7. Whether the suit is hit by by res judicata?OPD
8. Relief.

6. The parties have led their respective evidence on the aforesaid issues.

7. The trial Court after hearing learned counsel for the parties and appraisal of the evidence decreed the suit of the plaintiff with costs vide judgment and decree dated 20.1.1987.

8. Feeling dissatisfied with the aforesaid judgment and decree dated 20.1.1987, the defendants preferred appeal before the First Appellate

The First Appellate Court vide its judgment and decree dated 20.1.1987 dismissed the appeal.



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9. Feeling dissatisfied with the aforesaid judgments and decrees dated 20.1.1987 and 26.5.1987, passed by both the Courts below, the defendant/appellants have directed the present regular second appeal before this Court.

10. The learned senior counsel for the appellants has submitted the following substantial questions of law have arisen in the present appeal for determination :-

1. Whether the Courts below erred in relying upon the order passed by the Registrar and Sub Registrar when the same were not produced on the record?
2. Whether the Lower Appellate Court erred in law in not returning a finding on whether the appellants were bonafide purchasers?
3. Whether the sale in favour of the appellants is protected by Section 41 of the Transfer of Property Act?
4. Whether the judgments and decrees passed by the Courts below are perverse and hence liable to be set aside?

11. I have heard learned Senior counsel for the appellants and have gone through the records of the case with his able assistance.

12. Learned counsel for the appellants has submitted that both the Courts below have erred in relying upon the order passed by the Registrar and Sub Registrar, more so when the same has not been produced on the file. The Courts below should have returned a finding that appellants are bona fide purchasers for valuable consideration on account of sale deed dated 14.11.1973 executed by Sadhu Singh in their favour. The sale in favour of the appellants is protected under Section 41 of the Transfer of



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are perverse in as much as the right of the appellants in respect of registered

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sale deed dated 14.11.1973 has not been considered. The plaintiffs have no legal right to get the property redeemed as the sale deed in their favour is after the execution of the sale deed in favour of the defendants/appellants.

13. The learned counsel for the appellants has submitted that the First Appellate Court is bound to return issue-wise findings. The First Appellate Court has not given issue-wise findings. So, in view of the authorities Karnataka State Road Transport Corporation vs. Smt. Asmathunnisa and others 2001 Punjab Law Reporter page 234, Smt. Harjit Grewal and others vs. Dr. Vinod Kumar Batra and others 2010 Punjab Law Reporter page 235, and Santosh Hazari vs. Purushottam Tiwari (Deceased) By LRS 2001(3) Supreme Court Cases page 179, the present appeal is liable to be remanded before the First Appellate Court to give issue-wise finding.

14. It is further submitted that improper functioning of the First Appellate Court may give rise to substantial question of law. The judgment and decree of the First Appellate Court must displace conscious application of the mind and record finding supported by the reasons on all the contention and issues. The First Appellate Court has not decided the issue of bona fide purchasers and as such the case is liable to be remanded back to the First Appellate Court for deciding that issue.

15. I have carefully considered the said submission but do not find any force in that submission.

16. The counsel for the appellants is fair enough to concede that the sale deed dated 14.11.1973 in favour of the defendants/appellants.



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Although the earlier sale deed was registered on 10.10.1975 after the sale deed in favour of the defendants. However, it is submitted that there were no reference of the sale deed in favour of plaintiffs and as such the defendants are the bona fide purchasers for valuable consideration and their rights are protected under Section 41 of the Transfer of Property Act.

17. The learned trial Court has elaborately dealt in this aspect of the case. On the strength of authorities Basant Lal vs. Bala Misra All India Reporter 1958 Patna 312 and State of West Bengal vs. N.C.Kundu All India Reporter 1978 Cal. 347, the trial Court held that date of execution of a document of transfer shall relate back to the date of its execution and not the date of registration. From the endorsement made on the back side of sale deed Ex.A1, it is revealed that the same was presented for registration on 7.6.1973 and the Sub Registrar refused the registration on 27.7.1973 and the request for registration was allowed on 19.9.1975 by the Registrar. So, in case the defendants had made little inquiry from the office of Sub Registrar, it would have been revealed that the sale deed dated 8.2.1973 in favour of the plaintiff has already been pending for registration before the competent authority. So, in these circumstances, the appellant could not take the plea of bona fide purchasers. Any sale during the pendency of proceedings before Sub Registrar cannot be held to be a bona fide sale. Since the sale deed in favour of the defendants does not confer any legal right upon them as such they have no right for redemption. The suit for redemption by the plaintiff has been



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agreed by both the Courts below.

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18. The other argument advanced by the learned counsel for the appellants that since the First Appellate Court has not decided the issue of bona fide necessity and as such the case be remanded in view of authorities Karnataka State Road Transport Corporation's, Smt. Harjit Grewal and others' case and Santosh Hazari's case (supra). That submission is meritless. The first Appellate Court has to decide the point argued before it. Any point not specifically argued before the First Appellate Court need not to be decided by the First Appellate Court. The main stress laid before the First Appellate Court was that since the mutation has not followed the sale deed dated 8.2.1973 and the plaintiff has purchased through sale deed dated 8.11.1973 and knowing that the registered sale deed in favour of the plaintiff is incomplete document, the implementation of the document has been dealt in para No.9 of the judgment. It has been rightly observed that sale deed will relate to the date of its execution and not its registration. Mutation could not be attested in favour of the plaintiff as the matter was sub-judice before the competent authority for registration of the sale deed. So, in these circumstances, the appellants cannot derive benefit of the above said authorities.

19. So, in view of the above discussion, all the substantial questions of law raised by ~~the learned senior counsel for the~~ appellants stand determined against them.

20. Consequently, the appeal is without any merit and the same stands dismissed with costs.

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20. A copy of this judgment be sent to the trial Court for strict compliance.

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(K.C.PURI)
JUDGE

PUNJAB AND HARYANA HIGH COURT

Decree added
15/9/2011

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Rajwani

