

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 663 of 2005

Decided on : May 26, 2006

Rattan Dass

.....Appellant.

VERSUS

Mehar Chand and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Dalip K. Sharma, Adv.

**For the Respondents : Mr. G.D. Verma, Senior Adv., with
Mr. B.C. Verma, for respondents
No.1 and 2.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. This appeal is filed by one of the three defendants against whom a suit was filed by the respondents-plaintiffs, Mehar Chand and Hem Raj, seeking declaration that they were owners in possession of 3 bighas 2 biswas 18 biswansi land, situated in village Baryogi, Tehsil Thunag, District Mandi, having purchased the same for a sum of Rs.32,000/- from its previous owner, namely Smt. Sananu proforma-respondent No.3, through her attorney Gian Chand, proforma-respondent No.4, who were impleaded as defendants No.2 and 3, respectively. It was alleged that the present appellant-defendant No.1 had been threatening to interfere in the possession of

¹ *Whether the reporters of the local papers may be allowed to see the Judgment?*

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the plaintiffs without any right, title or interest. Written statement was filed only by the present appellant. He claimed that he had purchased a portion of the suit land to the extent of 2 bighas 8 biswas 10 biswansi, out of the suit land, in the year 1970 from Doom, husband of defendant No.2 Sananu, and ever since he had been in possession of the said portion. Plaintiff then amended the plaint and took the plea that he was bonafide purchaser for consideration having no knowledge of the sale allegedly made in favour of the appellant-defendant by the husband of defendant Sananu.

3. The trial Court framed various issues, on the pleadings of the parties and then proceeded to record the evidence. At the end of the trial, it was held that the sale deed set-up by the plaintiffs has not been properly proved and that the consideration mentioned in the sale deed had also not been paid and, therefore, the sale was not valid. Appellant's-defendant's plea that he had purchased a portion of the suit land from the previous owner Doom, husband of defendant Sananu, also did not find favour with the trial Court. Suit was dismissed, in view of the finding that the plaintiffs had failed to prove that the suit land had been sold to them by defendant Sananu through her attorney Gian Chand.

4. Respondents-plaintiffs filed appeal in the Court of District Judge. Appeal has been accepted with the finding that the suit land had been sold by proforma-respondent Sananu in favour of the respondents-plaintiffs, through Gian Chand acting as her attorney.

5. Appellant's grievance is that the first Appellate Court has not properly considered the document of sale executed by Sananu's

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husband in appellant's favour nor has it given due weightage to a compromise decree Ex. PM, passed in favour of the appellant-defendant, pursuant to a compromise arrived at between him and proforma-respondent Sananu.

6. Ex. PC is the document that was executed by Gian Chand, acting as attorney of respondent Sananu, in favour of respondents-plaintiffs Mehar Chand and Hem Raj. This sale deed has been proved by one of the attesting witnesses. It is duly registered. There is an endorsement by the Registrar that the General Attorney of the vendor admitted having received the sale consideration.

7. Appellant-defendant examined Sananu and Gian Chand as his witnesses. Gian Chand in his testimony as DW-6 stated that per sale deed Ex. PC he intended to sell some other property situated in a different village and not the suit land, but the plaintiffs in connivance with the scribe and the attesting witnesses got the land, intended to be sold, misdescribed. Such a plea had not been taken by the appellant-defendant in the written statement and so the evidence cannot be looked into. In any case, when the attesting witness has stated that the sale deed had been read over and explained to Gian Chand, the executant, and he executed it only after admitting its contents to be correct, and the sale deed is duly registered and the endorsement on sale deed reads that its contents were read over and explained and the same were admitted to be correct, no fault can be found with the finding of the first Appellate Court that the suit land had

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been sold by proforma respondents in favour of the contesting respondents-plaintiffs.

8. Appellant claims to have purchased the suit land through a document Ex. DW-5/A. A reading of the document shows that the appellant-defendant was sold some land by Doom, the husband of proforma-respondent Sananu. Description of the land is not given in the document. Further, though the sale consideration in this document is stated to be Rs.2,800/-, i.e. more than Rs.100/-, the document is unregistered and, therefore, the document does not confer any title on the appellant-defendant. It is not the case of the appellant-defendant that he had acquired title by prescription on account of the defective sale made through Ex. DW-5/A.

9. Ex. PM is a compromise decree. Appellant had filed a suit against Sananu and Gian Chand, the wife and son, respectively, of Doom, seeking a declaration that a portion of the suit land had been sold to him by Doom, through writing Ex. DW-5/A. It was in that suit that compromise decree Ex. PM was passed. A reading of this decree shows that proforma-respondents admitted that a portion of the suit land had been sold in favour of the appellant by their predecessor Doom. Admittedly, the plaintiffs-respondents were not party to the suit in which compromise decree has been passed and, therefore, the same does not bind them.

10. From the above discussion, it is clear that no substantial question of law arises. The first Appellate Court has rightly concluded that the suit land had been sold by the proforma-respondents in

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favour of the contesting respondents-plaintiffs. Consequently, the appeal is dismissed.

CMP No.1152/2005

11. Dismissed. Interim order, dated 6.1.2006, passed on this application is vacated.

May 26, 2006(sd)

**(Surjit Singh)
Judge.**