

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2287 of 2010(O&M)

Date of decision: 30.06.2010

Sukhdev Singh and others

.....Appellant(s)

Versus

The Municipal Committee, Rania and another

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE RAKESH KUMAR GARG

* * *

Present: Mr. L.N. Verma, Advocate for the appellants.

Rakesh Kumar Garg, J.

This is plaintiffs' second appeal challenging the judgment and decree of the Lower Appellate Court whereby it has reversed the findings of the trial Court on issue No.1 and has ordered to dismiss the suit of the appellants for mandatory injunction while accepting the appeal filed by the defendant-respondent.

As per the averments made in the suit, the Gram Panchayat, Rania carved out 137 plots in square No.110 and 123 of village Rania and sold the same vide resolution dated 31.3.1969 as per site plan (and the sale deed) in favour of the appellants. The plaintiff-appellants purchased the plots vide sale deed dated 18.4.1970 and constructed their houses on their respective plots but consequential changes in the revenue record could not be made though the plaintiffs continued to be in possession. Taking advantage of non-updating of the revenue record, defendant No.1 (successor-in-interest of Gram Panchayat, Rania) wanted to interfere into ownership and possession of the plaintiffs. Plaintiffs requested the defendants to correct the records of rights and not to interfere with their

ownership and possession but on their failure to do so, the present suit was filed.

Joint written statement was filed on behalf of the defendants opposing the suit on various legal objections. On merits, it was alleged that prior sanction for transfer of land of the Panchayat was not taken from Director of Panchayat and therefore, no title was conveyed in favour of the plaintiffs and alleged sale deeds were void and not binding upon the defendants. The legality of resolution dated 13.1.1969 was also questioned and it was alleged that they were not bound by the same. The defendants denied the title as well as possession of the plaintiffs and sought dismissal of the suit with costs.

The parties went for trial on the following issues:

- “1. Whether the plaintiffs purchased the plot in dispute from Gram Panchayat vide resolution dated 31.3.1969 for ? OPP.
2. If issue No.1 is proved in favour of the plaintiffs whether the plaintiffs are entitled to the decree for mandatory injunction as prayed for ? OPP.
3. Whether the civil court has no jurisdiction to try the present suit ? OPD.
4. Whether the suit of the plaintiff is not maintainable in the present form ? OPD.
5. Whether the suit is bad for non-joinder of necessary parties and if so to what effect ? OPD.
6. Relief.”

The parties produced oral as well as documentary evidence in support of their respective contentions.

After hearing learned counsel for the parties and evaluation of

the material on record, the trial Court decreed the suit.

Aggrieved from the aforesaid judgment and decree, the defendant-Municipal Committee preferred an appeal which was partly accepted holding that the alleged sale deeds in favour of the plaintiff-appellants could not be held as legal and valid and therefore, no mandatory injunction could be issued against the respondent to enter and sanction the ownership in the revenue record regarding the purchase of residential plots by the appellants from Gram Panchayat, Rania. However, it was held that the appellants were entitled to remain in possession & decree for permanent injunction was affirmed.

Not satisfied with the aforesaid judgment and decree of the Courts below, the appellants have filed the present appeal raising the following substantial question of law:

“(a) Whether possession of the appellants over the plots in dispute can be held to be invalid and unauthorised in face of Resolutions Ex.P-12 and P-13, sale deeds Ex.P-7 to p-11 and Receipts No.27 to 31 dated 04.05.1969 issued by the Gram Panchayat in token of receipt of entire sale consideration of the plots in dispute?

(b) Whether the respondent-Municipal Committee is bound by the sale of the plots in dispute made in favour of the appellants and all other acts done by its predecessor-Gram Panchayat?

(c) Whether having upheld and affirmed the finding of the Trial Court on issue No.2, the Ld.Lower Appellate Court could set aside the mandate issued by the Trial Court to the respondents as mentioned in the decree

dated 12.09.2007?

(d) Whether the Ld. Lower Appellate Court has erred in reversing the finding of the Trial Court on issue No.5?

(e) Whether the Ld. Lower Appellate Court could reverse the finding of the Trial Court on issue No.1 without giving any reason?

(f) Whether the finding of fact recorded by the Ld. Court below without giving any distinct reasons are immune to challenge and interference in the second appeal?"

In support of the arguments, learned counsel for the petitioners has vehemently argued that there was overwhelming evidence on record to prove that the appellants purchased the plots in dispute from the Gram Panchayat and they cannot be deprived of their ownership and possession of the plots in dispute for want of registration of the sale deeds on account of alleged failure of the Gram Panchayat to obtain permission of the Competent Authority for sale of the plots in dispute. The respondents were under a legal obligation to mutate the plots in dispute in favour of the appellants and to reflect and incorporate their ownership and possession in the relevant records. Thus, it was prayed that judgment and decree of Lower Appellate Court to the extent it has decided against them be set aside by accepting the appeal and suit of the plaintiff-appellants be decreed in toto.

I have heard learned counsel for the appellants and perused the impugned judgment and decrees of the Courts below.

While denying the relief, the Lower Appellate Court has observed that vide resolution dated 31.3.1969, the Gram Panchayat had resolved to seek the approval of the Deputy Commissioner, Hisar for sale

of the plots. However, it could not be proved that the competent Authority had approved the transfer of land in favour of the appellants by way of sale of plots and thus, the alleged sale deeds in favour of the plaintiffs could not be held to be legal and valid. It is not the case of the learned counsel for the appellants that no approval of the Government was necessary or that any such approval for sale of plots was granted by the Government or deemed to be granted.

In view of the aforesaid findings recorded by the Lower Appellate Court, no interference is called for in the impugned judgment and decree.

No other point was argued. Thus, no substantial question of law, as argued, arises in this appeal.

Dismissed.

30.06.2010
ps

(RAKESH KUMAR GARG)
JUDGE

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