

(2012) 09 P&H CK 0245

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2270 of 2012

Ram Singh

APPELLANT

Vs

Smt. Shakuntala and Others

RESPONDENT

Date of Decision: Sept. 18, 2012

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: D.S. Bali, with Ms. Poonam Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Defendant No. 1 Ram Singh having lost in both the courts below has filed the instant second appeal. Respondents No. 1 to 8/plaintiffs filed suit against defendant No. 1-appellant and against proforma respondents No. 9 to 11 as defendants No. 2 to 4. All the 8 plaintiffs are daughters of Manphool Singh whereas defendant No. 2 Subhash is son of Manphool Singh. Plaintiffs' case is that they along with defendant No. 2 inherited the land measuring 53 kanals comprised of khasra No. 959 from their father Manphool Singh in equal shares vide mutation No. 13230 dated 14.5.2002 and are accordingly owners in possession thereof to the extent of 1/9th share each. However, land in dispute was declared surplus by the Government vide mutation No. 10143. However, the land was transferred back to the owners vide order dated 9.3.1987 passed by Sub Divisional Magistrate, Rohtak and mutation No. 131-K was sanctioned in favour of the owners i.e. plaintiffs and defendant No. 2. The said matter is, however, pending in this Court in CWP Nos. 6026 and 6021 of 1990 which stand admitted and dispossession has been stayed. In the revenue record, the plaintiffs and defendant No. 2 are recorded to be owners in possession of the suit land in equal shares. However, defendant No. 2 in collusion with other defendants and by fraud sold part of the aforesaid land to defendant No. 1 vide sale deed dated 31.1.2005 depicting the said land to be located within Lal Dora of the village as per certificate obtained from Sarpanch whereas in fact the suit land is

situated outside Lal Dora. The aforesaid sale deed is null and void and not binding on the rights of the plaintiffs.

2. Defendants No. 2 to 4 were proceeded against ex parte. Only defendant No. 1-appellant contested the suit. Averments made in the plaint were controverted. It was pleaded that the suit plot purchased by him falls within Lal Dora of the village as also certified by the Sarpanch of the Gram Panchayat. Defendant No. 1 claimed to be bonafide purchaser of the suit plot for valuable consideration. It was pleaded that the suit plot falls within the Abadi Deh and defendant No. 1 is owner in possession thereof. Sale deed dated 31.1.2005 was pleaded to be legal and valid.

3. Both the courts below have decreed the plaintiffs' suit regarding share of the plaintiffs while maintaining the sale deed regarding share of defendant No. 2. Feeling aggrieved, defendant No. 1 has filed this second appeal.

4. I have heard learned senior counsel for the appellant and perused the case file.

5. Counsel for the appellant vehemently contended that the matter regarding suit land being surplus land of Manphool Singh is pending adjudication in CWP Nos. 6026 and 6021 of 1990 and therefore, the plaintiffs' suit could not be decreed. The contention cannot be accepted. Defendant No. 1 -appellant is not even party to the said writ petition. On the other hand, even if the land is ultimately declared surplus, the Government or the allottee may take the same but under the garb of impugned sale deed, defendant No. 1 has no right in the suit land qua the share of the plaintiffs. Consequently, the aforesaid writ petitions have no bearing on the instant lis and this judgment shall have no bearing on the merits of the said writ petitions.

6. Contention of counsel for defendant No. 1/appellant that appellant is bonafide purchaser of the suit land is also unacceptable because it has been established on record that the suit land is part of khasra No. 959 and is situated outside Lal Dora of the village. However, defendant No. 1 purchased the suit land from defendant No. 2 by wrongly depicting it to be located within Lal Dora or within Abadi Deh. For this purpose, defendants No. 1 and 2 also obtained certificate from Sarpanch of the Gram Panchayat that the suit plot is located within the Lal Dora. In ordinary course, no such certificate was required. However, there was guilty conscience of defendants No. 1 and 2 because they knew that suit land is situated outside Lal Dora. In order to deceive the plaintiffs, defendants No. 1 and 2 obtained certificate from the Sarpanch that the land is situated inside Lal Dora and on its basis, defendant No. 2 executed sale deed thereof in favour of defendant No. 1. All this conduct of defendants No. 1 and 2 clearly manifests that defendant No. 1 is not bonafide purchaser of the suit land. However, sale deed regarding share of defendant No. 2 vendor has been rightly upheld in favour of defendant No. 1.

7. For the reasons aforesaid, I find no merit in the instant second appeal. Concurrent finding recorded by both the courts below to decree the suit of the plaintiffs is fully justified by the evidence on record. The said finding is not shown to be perverse or

illegal or based on misreading or misappreciation of evidence. There is no ground to interfere with the said finding. No question of law much less substantial question of law arises for adjudication in this second appeal. The appeal is meritless and is accordingly dismissed. Cost amount of Rs. 1000/- imposed on the preceding date of hearing has not yet been deposited with the Registry of this Court. As prayed for by counsel for the appellant, the appellant is allowed to deposit the same within two weeks from today failing which the case shall be listed for this purpose.