
(2015) 01 SHI CK 0002
High Court of Himachal Pradesh
Case No: RSA No. 284 of 2003

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| Bansi Lal | | APPELLANT |
| | Vs | |
| Ramesh Chand | | RESPONDENT |

Date of Decision: Jan. 1, 2015

Acts Referred:

- Penal Code, 1860 (IPC) - Section 52
- Specific Relief Act, 1963 - Section 19, 19(a), 19(b)
- Transfer of Property Act, 1882 - Section 3, 53

Citation: (2015) 2 ShimLC 792

Hon'ble Judges: Rajiv Sharma, J.

Bench: Single Bench

Advocate: Ajay Sharma, for the Appellant; H.K. Bhardwaj, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sharma, J.

This regular second appeal is directed against the judgment and decree of the learned District Judge, Una, H.P. dated 9.5.2003, passed in Civil Appeal No. 89 of 1999.

2. Key facts, necessary for the adjudication of this regular second appeal are that the respondents-plaintiffs (hereinafter referred to as the plaintiffs) have filed suit for declaration to the effect that they are owner-in-possession of land measuring 0-11 marlas bearing Kh. No. 1304 comprised in khewat No. 16, khatauni No. 21, as entered in the jamabandi for the year 1983-84, situated in Village Rampur, H.B. No. 209 of Tehsil and District Una, being successors of Smt. Nasib Kaur wife of Swarna Ram, plaintiff No. 1 and mother of plaintiffs No. 2 to 4, on the basis of the registered sale deed dated 8.6.1973. The appellants-defendants as arrayed in the original suit (hereinafter referred to as the defendants), have no right, title or interest in the suit land. The entries in the name of defendants No. 1 to 6, as arrayed in the original

Civil Suit No. 5 of 1990, in the revenue record are wrong, baseless, unauthorized. The sale deed by defendants No. 1 to 6, as detailed in the original suit, in favour of defendants No. 7 and 8 is wrong, illegal, fictitious and ineffective as against the rights of the plaintiffs. The suit land was earlier owned and possessed by Inder Singh, predecessor-in-interest of defendants No. 1 to 6, as detailed in the original suit. Sh. Inder Singh vide registered sale deed dated 8.6.1973 Ext. PW-2/A had sold the suit land to Smt. Nasib Kaur wife of Swarna Ram and mother of plaintiffs No. 2 to 4 and Smt. Swarni Devi wife of Dhani Ram, for a consideration of Rs. 300/- and delivered the possession of the suit land. After the execution of sale deed, Nasib Kaur alongwith Swarni Devi are in possession of the suit land. After the death of Nasib Kaur, the plaintiffs being successors of Nasib Kaur alongwith Smt. Swarni Devi are in possession of the suit land. The mutation could not be attested due to the death of Inder Singh and non-appearance of his legal representatives. In these circumstances, mutation was sanctioned in favour of defendants No. 1 to 6. Defendants No. 1 to 6 taking undue advantage of wrong entries of their names, being fully aware that the sale deed existed in favour of plaintiffs, have sold the suit land to defendants No. 7 and 8.

3. The suit was contested by only defendants No. 7 and 8, namely, Kishan Chand and Bansi Lal by filing written statement. According to them, they have purchased the suit land in good faith vide registered sale deed dated 20.10.1989 from the owners and physical possession of the suit land was also given to them. Mutation has also been sanctioned in their names. They have raised the construction well before filing of the suit. According to them, Inder Singh remained in physical possession of the suit land till his death and after his death, his LRs remained in possession as owners and now the appellants are in physical possession of the suit land since its purchase.

4. Replication was filed by the plaintiffs. The learned Sub Judge, Ist Class, Una, framed the issues on 14.2.1994. The learned Sub Judge, Ist Class, Una decreed the suit on 18.3.1999. The appellants herein, feeling aggrieved by the judgment and decree dated 18.3.1999, filed an appeal before the learned District Judge, Una. The learned District Judge, Una also dismissed the same on 9.5.2003. Hence, this regular second appeal.

5. The regular second appeal was admitted on 15.12.2004 on the following substantial question of law:

"1. Whether the trial Court and the first appellate Court erred in holding that the appellants were not bona fide purchasers for consideration and entitled to protect under Section 53 of the Transfer of Properties Act?

6. Mr. Ajay Sharma, Advocate, on the basis of the substantial questions of law framed, has vehemently argued that his clients are bona fide purchasers. They have verified the revenue record at the time of purchase of the land on 20.10.1989. On the other hand, Mr. H.K. Bhardwaj, Advocate, has supported the judgments and

decrees passed by both the Courts below.

7. I have heard the learned Advocates for the parties and gone through the judgments and records of the case carefully.

8. PW-1 Sh. M.K. Vishwamitter was appointed as Local Commissioner by the Court in the year 1990. He has proved his report Ext. PW-1/A and rough sketch Ext. PW-1/B. According to him, the construction work was in progress on the spot. PW-2 Ranjit Singh has proved the document Ext. PW-2/A. PW-3 Ram Singh has identified the signatures of his father. He deposed that his father has died and in his register at Sr. No. 282, the sale deed executed by Inder Singh in favour of Nasib Kaur is entered. His father has scribed the document Ext. PW-2/A. PW-4 Ram Asra is the marginal witness of document Ext. PW-2/A. He deposed that Inder Singh has executed sale deed of Kh. No. 1304 for a consideration of Rs. 300/- in favour of Nasib Kaur and Swarni. He paid Rs. 100/- as expenses of the sale deed, Rs. 200/- to Inder Singh before the Tehsildar. The sale deed was got scribed from Ganpat Rai, Petition Writer by Inder Singh. The contents of the same were read over to Inder Singh. Inder Singh put his signatures over the sale deed after admitting the contents of the same to be correct. He also put his signatures on the sale deed in his presence. Thereafter, the sale deed was produced before the Registrar and the Registrar read over the sale deed to Inder Singh. Inder Singh received Rs. 200/- from him in the presence of the Registrar. The witnesses Sh. Achhar Singh and Dalip Singh have now died. Inder Singh has also expired. In his cross-examination, he denied that he got executed the Benami sale deed. He denied the suggestion that during life time of Inder Singh, he remained in possession of the suit land and after his death his LRs came in possession of the suit land. Volunteered that on the date of execution of the sale deed, Inder Singh delivered the possession to Nasibo and Swarni. PW-5 Kartar Singh has identified the signatures of Achhar Singh over Ext. PW-2/A. PW-6 Ramesh Chand deposed that suit land is about 11 marlas. It was situated on Kh. No. 1304. They are owners-in-possession of the same. The land was purchased by Nasibo and Swarni Devi from Inder Singh in the year 1973. Nasib Kaur was his mother and Swarni his Aunt. The suit land was purchased by them for a consideration of Rs. 300/- and after the execution of the sale deed, they came in possession of the suit land. In the year 1990, the defendants raised the threats to erect a house over the suit land without any right, title or interest.

9. Bansi Lal has appeared as D.W.-1. According to him, the suit land was about 11 marlas. They have constructed room over it. The suit land was purchased by them in the year 1989 from the LRs of Inder Singh and the mutation also stands sanctioned in their favour. He also deposed that the suit land was earlier in the possession of the LRs of Inder Singh and prior to this, Inder Singh was in possession of the same. Inder Singh was dead. He has proved document Ext. D.W.-1/A which is written by Harish, Deed Writer. D.W.-2 Harish, deposed that he has scribed Ext. D.W.-1/A. The sale deed was written by him at the instance of Kaushalya Devi in favour of Kishan

Cand and Bansi Lal. The contents of the deed were read over and explained to the vendors and thereafter they put their signatures on the sale deed in the presence of witnesses after admitting the same to be correct. The sale deed has been entered at Sr. No. 482 dated 20.10.1989. D.W.-3 Sh. Kehar Singh was marginal witness of document D.W.-1/A. According to the Jamabandi for the year 1973-74, Ext. P-1 Inder Singh is recorded as exclusive owner-in-possession of the suit land and in the remarks column vide mutation No. 2453, his estate stood mutated in favour of Kaushalya Devi etc. Ext. P-2 is the Jamabandi for the year 1978-79 wherein defendants No. 1 to 6, as detailed in the original suit, were recorded as owners-in-possession of the suit land. Ext. P-3 is the Jamabandi for the year 1983-84. Ext. D-2 is the mutation.

10. Their lordships of the Hon"ble Supreme Court in the case of [R. K. Mohammed Ubaidullah and Others Vs. Hajee C. Abdul Wahab \(D\) By Lrs. and Others](#), have held that Section 19(b) protects the bona fide purchaser in good faith for value without notice of the original contract. This protection is in the nature of exception to the general rule. Notice is defined in Section 3 of the Transfer of Property Act. It may be actual where the party has actual knowledge of the fact or constructive. A person is said to have notice of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation II of Section 3 of the Transfer of Property Act, 1963, states that the actual possession is notice of the title in possession. Their lordships have held as under:

"14. Section 19 of the Specific Relief Act, 1963, to the extent it is relevant, reads:

"19. Relief against parties and persons claiming under them by subsequent title. - Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against --

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c).....

(d).....

(e)..... "

As can be seen from Section 19(a) and (b) extracted above specific performance of a contract can be enforced against (a) either party thereto and (b) any person claiming under him by a title arising subsequent to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Section 19(b) protects the bona fide purchaser in good faith for value without notice

of the original contract. This protection is in the nature of exception to the general rule. Hence the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent purchaser. Good faith is a question of fact to be considered and decided on the facts of each case. Section 52 of the Penal Code emphasizes due care and attention in relation to the good faith. In the General Clauses Act emphasis is laid on honesty.

15. Notice is defined in Section 3 of the Transfer of Property Act. It may be actual where the party has actual knowledge of the fact or constructive. "A person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation II of said Section 3 reads:

"Explanation II - Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof."

Section 3 was amended by the Amendment Act of 1929 in relation to the definition of "notice". The definition has been amended and supplemented by three explanations, which settle the law in several matters of great importance. For the immediate purpose Explanation-II is relevant. It states that actual possession is notice of the title of the person in possession. Prior to the amendment there had been some uncertainty because of divergent views expressed by various High Courts in relation to the actual possession as notice of title. A person may enter the property in one capacity and having a kind of interest. But subsequently while continuing in possession of the property his capacity or interest may change. A person entering the property as tenant later may become usufructuary mortgagee or may be agreement holder to purchase the same property or may be some other interest is created in his favour subsequently. Hence with reference to subsequent purchaser it is essential that he should make an inquiry as to title or interest of the person in actual possession as on the date when sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property. In the case on hand defendants 2 to 4 contended that they were already aware of the nature of possession of the plaintiff over the suit property as a tenant and as such there was no need to make any inquiry. At one stage they also contended that they purchased the property after contacting the plaintiff, of course, which contention was negated by the learned trial court as well as the High court. Even otherwise the said contention is self- contradictory. In view of Section 19(b) of the Specific Relief Act and definition of "notice" given in Section 3 of the Transfer of Property Act read along with explanation II, it is rightly held by the trial court as well as by the High Court that the defendants 2 to 5 were not bona fide

purchasers in good faith for value without notice of the original contract."

11. In the instant case, the plaintiffs were in possession of the suit property and the same could not be sold to respondents No. 7 and 8. They have not made necessary inquiries to ascertain the possession of the plaintiffs.

12. Relying upon the decision in R.K. Mohammed Ubaidullah's case (supra), the learned Single Judge of the Punjab and Haryana High Court in the case of [Ishwar Singh and Another Vs. Rajender Singh and Others](#)--> , has held that subsequent purchaser has to be vigilant before execution of the sale deed. It was incumbent upon the subsequent purchaser(s) to enquire about the nature of possession of the plaintiff. It has been held as under:

"[9] Both the Courts below have returned concurrent findings on the basis of documentary as well as oral evidence of the attesting witnesses that defendant Hardwari executed agreement dated 28.8.1991 Ex, PW-6/A and receipt Ex. P6/B in favour of the plaintiff. It has further been held that thumb impressions of Hardwari were not obtained by any misrepresentation or fraud. It is well established that subsequent purchaser has to be vigilant before execution of the sale-deed. It is not disputed that the lease-deed executed in favour of plaintiff was registered document, wherein it had been clearly mentioned that possession of the suit property had been handed over to the plaintiff. In such circumstances it was incumbent upon the subsequent purchaser(s) to enquire about the nature of possession of the plaintiff. Even there is clear recital in the sale-deed Ex. P-1 that plaintiff has been in possession of the suit land on the basis of lease-deed executed for a period of five years. Said recital was a sufficient notice to the appellants and defendant Nos. 4 to 7 that the land was not free from all incumbencies. The Apex Court in the case of [R. K. Mohammed Ubaidullah and Others Vs. Hajee C. Abdul Wahab \(D\) By Lrs. and Others](#), has held that actual possession of a person itself is deemed or constructive notice of the title if any person who is for the time being is in actual possession thereof and it is for the subsequent purchaser to make further inquiry in this regard."

13. What emerges from the facts, enumerated hereinabove, is that the successor-in-interest of the plaintiffs and Swarni Devi have purchased land from Inder Singh vide sale deed Ext. PW-2/A on 8.6.1973. The sale deed has been duly proved by the plaintiffs. It is also evident from the language of Ext. PW-2/A that the possession was also delivered in favour of Nasib Kaur and Swarni Devi. It is settled law that a person cannot possess the better title than what he has. In the instant case, the sale deed was executed on 8.6.1973. The mutation could not be attested since Inder Singh has died and his legal representatives have not come on record at the time of attestation of mutation. The mutation does not confer any title. It is only used for fiscal purpose. The sale deed Ext. PW-2/A is valid. The defendants No. 1 to 6, as per array of parties in the original suit, could not sell the land, vide sale deed Ext. D.W.-1/A dated 20.10.1989 to the appellants herein. The only averment made in

the evidence led by the appellants is that they have made inquiries from the record. It has not come on the record that whether they have verified the record of the Sub-Registrar to ascertain whether the land in dispute was free from all encumbrances, as it was already sold to some other persons. The appellants have failed to prove that they were bona fide purchasers of the suit land on the basis of sale deed Ext. D.W.-1/A dated 20.10.1989. The substantial question of law is answered accordingly.

14. Consequently, there is no merit in this regular second appeal and the same is dismissed.