

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2013

(CC 9067/2013)

(From the judgement and order dated 24/05/2012 in RSA No.4819/2009 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

MAJ.RAJENDER SINGH

Petitioner(s)

VERSUS

SMT. PREM CHOPRA & ORS.

Respondent(s)

With I.A.1 (C/delay in filing SLP and office report)

Date: 29/04/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE ANIL R. DAVE

HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s)

Mr.B.S.Malik, Sr.Adv.

Mr.K.S.Sehrawat, Adv.

Ms.Monisha Sehrawat, Adv.

Mrs.Santosh Singh, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

This petition is directed against judgment dated 24.5.2012 of the learned Single Judge of the Punjab and Haryana High Court whereby he dismissed the second appeal filed by the petitioner and approved the judgment and decree passed by the lower appellate Court which had set aside the decree passed by the trial Court and declared that the transfer of the plot allotted to respondent No.1 in the name of respondent No.4 and sale thereof to the petitioner herein were illegal.

The trial Court had returned the finding that some women had impersonated respondent No.1 and got the plot transferred in her name. However, the sale of the plot in favour of the petitioner was not annulled on the ground that he was a bona fide purchaser.

The lower appellate Court expressed its agreement with the trial Court that transfer of the plot allotted to respondent No.1 by Haryana Urban Development Authority was vitiated by fraud. The lower appellate Court also held that the sale of the plot in favour of the petitioner was illegal and that the title of the petitioner cannot be protected under Section 41 of the Transfer of Property Act.

The learned Single Judge dismissed the second appeal filed by the petitioner and upheld the judgment and decree passed by the lower appellate Court.

Shri B.S.Malik, learned senior counsel for the petitioner argued that even though the finding recorded by the trial Court, the lower appellate Court and the High Court that the transfer of the plot allotted to respondent No.1 was vitiated due to fraud and impersonation, the transaction involving purchase of that plot by the petitioner could not have been annulled by the lower appellate Court because he had no role in the transfer of the plot in question by the authorities of HUDA. Shri Malik further argued that in the absence of any prayer for grant of a decree for possession, respondent No.1 was not entitled to seek a declaration that the sale of plot in favour of the petitioner was bad.

We have considered the arguments of the learned counsel but do not find any merit in either of them. The finding recorded by the trial Court, which has been confirmed by the lower appellate Court and the High Court that the plot allotted to respondent No.1 was fraudulently

transferred in the name of some other woman is based on correct analysis of the pleadings and evidence of the parties and the lower appellate Court did not commit any error by setting aside the decree passed by the trial Court.

The learned Single Judge of the High Court has also assigned cogent reasons for dismissing the second appeal. This is evinced from the following extracts of the impugned judgment:

"Defendant No.4 might not be party to the fraud and is setting up title only on the ground of being a bona fide purchaser from defendant No.3 but defendant No.3 has specifically taken the plea that she had purchased the property in question through property dealers namely G.D.Bansal and O.P.Chahal and even made payments to them. Exhibit D-4/6 which is the receipt of sum of Rs.20,000/- by way of bank drafts No.290000 dated 02.11.1989 which has allegedly been received by the plaintiff and was witnessed by 2 persons, signatures of one finds mention at serial No.1 whereas the other person is mentioned as Om Prakash Chahal. This substantiates the plea raised by the plaintiff that there was a racket in the office of defendant No.2 whereby the property was got transferred with the help of the said property dealers which is admitted in the written statement by defendant No.3 that the help of the said property dealers was taken. Defendant No.3 or her husband had not even appeared in the witness-box to depose that it was none other than the plaintiff who had signed the transfer application and given the affidavit for transfer and received the payment. Thus, the plaintiff has been able to prove her case that it was a fraudulent transaction based on impersonation. She has deposed about the said facts in the witness-box and produced the handwriting expert to prove her case and both the Courts below have concurrently found this aspect to be true and this Court has also seen the records and come to the conclusion that the Courts below were correct in recording such a finding. The contention of the counsel for the appellant that he was a bona fide purchaser and deserves protection under Section 41 of the Transfer of Property Act, 1882 cannot be accepted. Section 41 of the Transfer of Property Act, 1882 cannot be accepted. Section 41 of the Transfer of Property Act, 1882 reads as under:

"41. Transfer by ostensible owner

Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: PROVIDED that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

23. To attract the provisions of the said section, a person has to be the ostensible owner of the said property and transfer the same for consideration. In the present case, as noticed above, defendant No.3 was never the ostensible owner at any stage and therefore, defendant No.4 cannot draw any strength on the said provision. It is also pertinent to note that defendant No.4, the present appellant never appeared as a witness in the said case and therefore, an adverse inference has to be drawn against him. The defendants were given sufficient opportunity from 30.09.2004 and apart from partly examining the hand-writing expert and one official witness, no other witness was examined and the evidence was finally closed by order on 31.09.2005, after a period of one year. Defendant No.4 was well aware regarding the name of the property dealers who had assisted in the transfer and could have produced the said persons to controvert the case of the plaintiff that she had not signed the transfer documents and never deposited the balance 15% along with the enhanced cost of interest. No effort has also been made to prove that the pay orders initially deposited were also withdrawn from the account

of the plaintiff by producing any bank officials even though the pendulum of the plaintiffs case had swung against the defendants. The plaintiff was never able to cross-examine defendant No.4 on the said issue as he never appeared as a witness and therefore, he cannot take this plea of being protected as a bona fide purchaser and take the said defence that the transfer was by the HUDA officials in pursuance of their official duties and that the appellant was entitled for protection. This Court in Smt.Jangir Kaur (supra) has held as under:

14. I have considered the arguments raised by the learned Counsel for the appellants and find no force in the same. It is not in dispute that one of the sale in favour of the appellant-defendants was executed after the filing of the suit. The contention of the learned Counsel for the appellants that it was prior to the receipt of notice can be of no avail as it cannot be said in that situation that steps were taken by the appellants to verify the title of the vendor. The learned courts below were right in drawing an inference against the appellant-defendants as the defendant-appellants failed to appear in the witness box to assert the factum of knowledge and search and, therefore, in view of submissions made by the learned Counsel for the respondents it cannot be said that the findings recorded by the learned Courts below are perverse as is sought to be contended by the learned Counsel for the appellants.

15. The learned Courts below were, therefore, right in coming to the conclusion that appellants-defendant had failed to prove that they were bonafide purchaser for consideration without notice. In view of the finding recorded above, the questions as framed in this appeal are answered against the appellants.

24. Thus, keeping in view the principle laid down in Gulu Ram Vs. Chief Secretary. Haryana Government 1997 (3) PLR 478 that no person can confer a better title than he has and no title can be created in favour of the appellant and keeping in view the dictum laid down by this Court in Subhash Chand (supra) wherein it has been held "that after the allotment in favour of vendors of the appellants is cancelled, the appellants cannot claim to be the bona fide purchasers for its value and consideration. The only remedy available to the appellants, assuming the appellants to be purchasers for consideration, is to sue their vendors for recovery of the sale consideration." This right has been given to the present appellant and it has been directed that whatever amounts were deposited towards the price of the plot will be refunded by the plaintiff and the amount which has been paid shall be paid back by defendant No.3 to defendant No.4 with interest. As noticed, the appeal of defendant No.4 as RSA No.2478 of 2010 has already been dismissed on 14.09.2011 for non-prosecution and even in the present appeal, she was proceeded against ex parte vide order dated 21.07.2010. The judgment in Jagan Nath (supra) only lays down the principle of a bona fide purchaser for value and without notice and settles that it is a question of fact in each case which has to be taken into consideration and thus, is of no help to the appellant. Similarly, Anup Singh (supra) again lays down the principle that while dealing with the agricultural land, the prospective buyer is only to see that the revenue record was correct and he was not expected to meet each and every person of the family. In the present case, as noticed above, in view of the peculiar facts that there has been impersonation, the said judgment will have no applicability. In Crystal Developers (supra), the Hon'ble Apex Court was again examining the issue as to whether defendant No.4 was a bona fide purchaser with value without notice and whether the subsequent alienation in favour of defendant Nos.15 to 20 was valid and binding and whether the sale effected in pursuance of

probate which was granted and held to be valid, though the probate was revoked subsequently. In the judgment in Manga Singh (supra), the Court came to the conclusion that the appellant was a bona fide purchaser without notice since he did not have any knowledge that there was any previous sale deed which was earlier effected and not reflected in the revenue records."

In our view, the reasons assigned by the learned Single Judge for refusing to set aside well considered judgment of the lower appellate Court are correct and the impugned judgment does not call for interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master
