

CASE NO.:
Appeal (civil) 2464 of 2002

PETITIONER:
ZORAWAR SINGH & ANR.

Vs.

RESPONDENT:
SARWAN SINGH (DEAD) BY LRS. & ANR.

DATE OF JUDGMENT: 04/04/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

BRIJESH KUMAR, J.

Leave granted.

This appeal has been preferred against the Judgement and order dated 28.7.2000 passed by the Division Bench of Punjab and Haryana High Court, allowing the Letters Patent Appeal No.335 of 1983 preferred by the plaintiff, Sarwan Singh, who since dead, is represented by his legal representatives respondents No.1/ (i)(ii), (iii) & (iv) to this appeal. The order of the Single Judge has been set aside and the decree passed by the Trial Court in Civil Suit No.67 of 1971 has been restored, by which Suit was decreed in favour of Sarwan Singh for specific performance of agreement of sale.

It may be briefly indicated that one Kankar Singh was the original owner of the land in question. Zorawar Singh and Devinder Singh purchased land from Kankar Singh in respect of which Sarwan Singh filed a suit impleading Kankar Singh as defendant No.1 and Zorawar Singh and Devinder Singh son of Zorawar Singh, as defendants No.2 & 3. The plaintiff, Sarwan Singh and defendant No.1 Kankar Singh are now dead, their legal representatives are on record but for convenience their names are referred instead of that of their heirs.

The case of the plaintiff Sarwan Singh is that he entered into an agreement to sale dated 3.3.1971 with Kankar Singh in respect of land measuring 110 Kanal, 13 marlas for consideration of Rs. 1,98,312/-. It is also his case that he paid a sum of Rs. 61,100/- to Kankar Singh. The defendant No.1 Kankar Singh sold the land to defendant No.2 Zorawar Singh on 17.3.1971 despite the fact that on coming to know about it Sarwan Singh went before the Sub-Registrar with an application informing that land in dispute had already been agreed to be sold to him by Kankar Singh. The defendant No.1 was sought to be stopped from executing the sale deed in favour of defendants No.2 and 3. It is further averred in the plaint that the defendants had knowledge about the agreement yet they got the sale deed attested in their favour by the Sub-Registrar. He claimed preferential right in terms of agreement. The plaintiff made a prayer for a decree in his favour for specific performance of agreement dated 3.3.1971, on payment of the balance amount as against defendants No.1, 2 and 3. In the alternative decree

against defendant No.1 for a sum of Rs. 1,22,200/- as damages which includes the amounts paid as advance to defendant No.1. No other prayer was made.

The Defendant No.1 denied the allegations made by the plaintiff including alleged agreement to sell in favour of the plaintiff. So far defendants No. 2 and 3, namely Zorawar Singh and Devinder Singh are concerned, they denied the allegations made by the plaintiff and took up the plea that they are transferees in good faith for consideration without notice. It is specifically denied that they had any knowledge of any agreement to sell as alleged between the plaintiff and defendant No.1. It is also denied that the plaintiff moved any application before the Sub-Registrar. According to the defendant Zorawar Singh, he was already in possession of the land as tenant and had entered into an agreement on 31.12.1970 with Kankar Singh for sale of the land and had paid a sum of Rs. 38,000/- to Kankar Singh as earnest money in respect whereof he executed a receipt. Whereas according to the plaintiff he had entered into an agreement for sale with Kankar Singh on 3.3.1971. The Owner of the land Kankar Singh executed sale deed in favour of Zorawar Singh on 17.3.1971. On 19.3.1971 Sarwan Singh filed suit No.67/71 for specific performance of contract dated 3.3.1971. The present appeal arises out of the said suit. Zorawar Singh filed a Civil Suit No.200/1971 on 26/7/1971 for permanent injunction to restrain the defendants from dispossessing them from the suit land. By an order dated 7.10.1972 suit No.67/1971 and suit No.200/1971 were consolidated recording the evidence in suit No.67 of 1971. The Trial Court by a decree dated 31.5.1973 decreed the suit No.67/71 filed by Sarwan Singh. The present appellants preferred on appeal namely First Appeal No.350 of 1973 before the High Court which was allowed on 26.10.1982 by learned Single Judge of the High Court dismissing the suit of the plaintiff Sarwan Singh for specific performance of contract. A decree for refund of the earnest amount was though passed in favour of plaintiff Sarwan Singh. Sarwan Singh however, preferred Letters Patent Appeal No.335 of 1983, which was dismissed on 4.3.1991. The Special Leave Petition was filed by Sarwan Singh in the Supreme Court, the Supreme Court without expressing any opinion on the rival contentions of the parties remanded the matter for fresh disposal by the Division Bench. The Division Bench hearing the case after remand allowed the letters patent appeal setting aside the order passed by the learned Single Judge in the First Appeal restoring the decree passed by the Trial Court decreeing the suit for specific performance in favour of Sarwan Singh. The matter is thus again before this Court impugning in the Judgment and Order dated 28.7.2000 passed by the Division Bench in the letters patent appeal after remand.

The Division Bench of the High Court has reproduced in its judgment the issues, which were framed by the Trial Court. A reference to issue No. 5 has particularly been made which reads as under:-

" Whether defendants No. 2 and 3 are transferees in good faith for consideration and protected under Section 41 of the T.P. Act?"

It is observed that onus to prove issue No.5 ought to have been upon defendants No. 2 and 3. Thereafter the Division Bench mentions about the arguments raised on behalf of the plaintiff in the Supreme Court in the earlier round and the order remanding the matter back to the Division Bench for consideration on those points afresh. It will be appropriate to reproduce the part of the order passed by the Division Bench dealing with the matter after remand so as to indicate the background in which the Division Bench dealt with the matter. It is quoted below:-

"All that needs to be mentioned further is that when matter came to be disposed of by the Hon'ble Supreme Court, learned counsel for the plaintiff had referred to sale deed in favour of defendants 2 and 3 that was registered on March 17, 1971 and argued that on the same day, and before the registration was effected, plaintiff had filed an application before the Sub Registrar stating that he had an earlier agreement in his favour and, therefore, the registration of the sale deed in favour of defendants 2 and 3 should not be effected. He further argued that on this application, an endorsement was made by the Registrar to the effect that though such an application has been filed, the parties to the sale deed insisted upon its registration and, therefore, he registered the same. It was also brought to the notice of the Hon'ble Supreme Court that Registrar was examined to prove the endorsement. It was also the case of plaintiff before the Hon'ble Supreme Court as has been mentioned in order dated January 15, 1996, that it had been specifically averred by him that the application was filed before the Sub Registrar before the registration was effected and that such an endorsement was made. The counsel, after pointing out the facts, as detailed above, had further argued that the learned Single Judge was not right in saying that the averment in the plaint was a 'vague plea' and that the finding of the learned Single Judge that the said document is a subsequent manipulation was based on no evidence. The counsel, who represented the contesting defendants before the Hon'ble Supreme Court, however, disputed the correctness of the submissions of learned counsel for the plaintiff and it was pointed out by him that when Zorawar Singh, defendant was in the witness box, said endorsement was not put to him. After observing, as has been mentioned above, the Hon'ble Supreme Court, thought it proper that order of Division Bench dismissing LPA No.335 of 1983 should be set aside and matter be remitted to the High Court for fresh disposal in accordance with law. As mentioned above, the Hon'ble Supreme Court did not express any opinion on the contentions raised by the parties and directed that the matter is to be disposed of on its merits."

The High Court then also observes as under:-

"It is once again to mention that learned counsel for the parties have concentrated only on issue No.5 and further that the findings recorded by the Trial Judge on other issues are no more a subject matter of debate"

From the above observation it is clear that all that was required to be considered was as to whether the defendants No. 2 and 3 are the bona-fide transferees for consideration without notice of the agreement to sell between the plaintiff and defendant No.1? The High Court has also observed that it all relates to the question of fact. For appreciating the finding on the point for which the matter was remanded it would be necessary to see and consider the evidence which the parties have adduced in support of their respective cases and placed on the record. There can not be any dispute on the point that burden of proving the fact that one is a bona-fide purchaser for value without notice would lie on the person who asserts the same. But at the same time the fact

which cannot be lost sight of is that the plaintiff came forward with a positive case that on the fateful day namely 17.3.1971, he went to the Tehsil and moved an application before the Sub-Registrar bringing it to his notice and to the notice of the vendee that the vendor had earlier entered into an agreement to sell, with the plaintiff. This fact is said to have been brought to the notice of all concerned before attestation of the sale deed in favour of Zorawar Singh. There is no dispute about the consideration having passed on to defendant No.1 for transfer of the land in favour of Zorawar Singh as well as about the execution of the sale deed. The precise question for consideration will be about bona-fide purchase without prior notice of the agreement of sale between the plaintiff and the defendant Kankar Singh.

The learned Division Bench has negated the finding of the Single Judge, observing that it was not necessary for the plaintiff to have stated that he had moved an application before the Sub-Registrar on March, 17, 1971 at the time when the sale deed in favour of Zorawar Singh was about to be registered. The statement of plaintiff was recorded on 16.8.1971, but this important part of his case alleging prior notice of the agreement before execution of sale deed was not stated. Thereafter, on being recalled on May 26, 1973 he stated that the application was read over to the parties whereafter the Sub-Registrar made his endorsement exhibit P-4/2 on the same application and returned it to the witness. This statement was made near about after two years on recall of the witness. There is no reason as to why they could not make the statement earlier at the appropriate stage of the deposition. After all sale has been challenged mainly on the ground that purchaser had prior notice of the agreement. We also do not find anything wrong if the learned Single Judge on appreciation of facts and circumstances was of the view that Vazir Singh, who is alleged to have scribed the application should also have been produced as a witness. In the normal course if an application is handed over to a public officer in the office, who also makes an endorsement on the document it would be retained in the office record or in case for any reason it is handed back to the applicant, there would be some entry or record of such application having been moved and returned to the person concerned. We do not find that learned Single Judge had committed any fault in appreciating the above circumstance in the manner indicated above. True, it cannot be sole ground to draw any definite inference that the application had not been made at all, it may however strongly corroborate plea of one of the parties denying moving of such an application. The learned single Judge also seems to have taken into consideration the fact that, Bhagat Ram, the Sub-Registrar was examined as PW-5 by the plaintiff, but his statement was recorded very late sometime in November 1972. Therefore, a doubt seems to have been expressed about the truthfulness of the statement and the document, for this reason as well. The Division Bench thought that plea taken by the plaintiff in para 2 of the plaint was not vague as observed by Single Judge and observed that the Single Judge had misrepresented and mis-read the pleadings and the evidence lead by the parties, but. we have already observed that it was open to the learned Single Judge to have appreciated the evidence and circumstances the way it did. The observation about pleading in para 2 of plaint being vague may not be very accurate but that was not the only circumstance taken into consideration by the Single Judge, it considered other facts and circumstances all together.

According to the defendant Zorawar Singh, he had entered into an agreement for sale in respect of said land on 31.12.1970. He had paid a sum of Rs. 38,000/- in advance, the receipt is on record as an exhibit. It is surprising that the Division Bench of the High Court did not consider it even necessary to refer to this document. It will go a long way to show his bona-fide in purchasing the property. This is a document prior to agreement to sell between the plaintiff and defendant No.1, which is said to have been entered into on 03.03.1971,

whereas the document in favour of the defendant vendee is dated 31.12.1970 i.e. much prior in point of time, which is also proved by one of the attesting witness namely, DW-2 Harnail Singh. In connection with this document, it has been submitted by the learned counsel for the respondent that it bears no date. However, we find that December 31, 1970 is written against the signatures of one of the signatories of the document. Kankar Singh says in this document that he had received a sum of Rs. 38,000/- in advance as consideration at the time of agreement to sell this land. It therefore, leaves no room to doubt that a deal was struck between Kankar Singh and Zorawar Singh for sale of the property in question much prior to the alleged sale agreement between the plaintiff and Kankar Singh, defendant No.1. In pursuance of the agreement a sale deed was executed by Kankar Singh in favour of Zorawar Singh and Devinder Singh on 17.03.1971 and registered before the Sub-Registrar. This circumstance lends support to the case of the vendee, as bona-fide purchasers. In so far it relates to the statement of PW-5, a perusal of the same indicates that he has actually not proved any document at all. He has not stated about his signature, which he may have put on any such document and further saying that it was the same document, bearing his signatures. He also admits that document was not entered anywhere in the records. He denies the suggestion about the document having been prepared later on.

In the above circumstances, no exception can be taken to the view taken by the Single Judge in first appeal having not relied upon on the alleged application of the plaintiff upon which Sub-Registrar is said to have made an endorsement. Firstly, the application in original after having been received and after making an endorsement on it, it is said to have been returned to the applicant. Again there is no record or entry of the same in the records of the office of the Sub-Registrar. The sub-Registrar was examined much later while the document is supposed to have remained in the custody of plaintiff throughout until filed in Court. No presumption of correctness of official act can be attached to such a document and the Sub-Registrar has not stated that the document was before him, upon which he may have identified his signatures stating that it was the same document. It was only a chance, that the plaintiff happened to be there in the Tehsil office when he come to know about that the sale deed was going to be registered. The deed writer or the scribe, who is said to have prepared the application, has not been examined. There is an earlier agreement to sell between the defendant No.1 Kankar Singh and vendee-defendants, which unfortunately does not find favour of even being taken notice of by the Division bench much less appreciated.

For the discussion held above in our view, the learned Division Bench, in the back ground of the facts and circumstances, wrongly came to the conclusion that the findings of the learned Single Judge were liable to be set aside on the ground of being based on misreading or misinterpretation of pleadings or evidence and presumptions unlawfully drawn. There may be wrong appreciation of the averments made in paragraph 2 of the plaint, but that alone will not be sufficient to upset the findings recorded by the learned Single Judge in the first appeal on appreciation of entire evidence on the record including document D-1 executed by PW-1, Kankar Singh in favour of Zorawar Singh agreeing to sell the property in his favour under the said deed dated 31.12.1970. The submission on behalf of the respondent that it is doubtful since made on the last date of the year has no force at all. It is an agreement earlier in point of time. It lends support to case of bona-fide purchase by the defendant-vendee in pursuance of earlier agreement dated 31.12.1970. The case of the plaintiff that vendee had prior notice of agreement to sell dated 3.3.71 between plaintiff and Kankar Singh on the basis of the alleged application said to have been moved before the Sub-Registrar just before execution of sale deed is not made out. There was no good reason to upset the findings in the

Letters Patent Appeal as recorded by the learned Single Judge in the First Appeal.

In the result, we allow the appeal set aside the order passed by the Division Bench in the letters patent appeal and restore the judgment and decree passed by the learned Single Judge of the High Court in first appeal.

Costs easy.

.J.
(D.P. Mohapatra)

.J
(Brijesh Kumar)

April 04, 2002

JUDIS