**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****104****RSA-621-A-1991 (O&M)****Date of decision: 11.02.2025****Hartehal Singh and others****...Appellant(s)****Vs.****Mohinder Kaur and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Paras, Advocate for  
Mr. V.K.Jain, Advocate for the appellants.

Mr. Sukhjit Singh, Advocate for respondent No.1.

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**NIDHI GUPTA, J.**

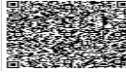
The defendants No. 1, 3 and 4 are in second appeal before this Court against the concurrent judgments and decrees of the learned Courts below, whereby the suit for declaration filed by the plaintiff/respondent No.1 herein, has been decreed by both the courts below.

2. The brief facts of the case as set out in the plaint are that the plaintiff along with defendant No.5/respondent No.3 herein, was owner in possession of half share in the land in dispute total measuring 144 K 6 M (as fully described in the head note of the plaint); and except the land measuring 32 K as mentioned in the plaint of which possession has been sought from part of share of the plaintiff. Previously, this land was jointly



owned by Harbagh Singh/husband of the plaintiff and Harbans Singh defendant No. 5/brother of Harbagh Singh in equal share. Harbagh Singh had given his half share in the land measuring 144 K 6 M to the plaintiff in lieu of maintenance before the village Panchayat and relatives of the plaintiff and Harbagh Singh. As change of ownership was not reflected in the revenue record, the plaintiff had filed a civil suit No. 239 dated 01.09.1983 (Ex. P1 and Ex.P2) which was decreed vide judgment and decree dated 22.09.1983 Ex.P3/A and plaintiff was declared owner in possession of the suit land to the extent of half share of total land measuring 144 K 6 M. It is further the case of the plaintiff that defendants No.1 to 4 were illegally trying to dispossess her of the land measuring 32 K of her share in the above land without the consent of the plaintiff. It has been alleged by the defendants that the said 32 K has been purchased by them from Harbagh Singh vide registered sale deed dated 26.09.1984. It was further stated in the plaint that the said sale deed was never executed by Harbagh Singh; and even if execution of Harbagh Singh is proved, he was not competent to execute any sale deed in view of the decree dated 22.09.1983. As such, the plaintiff sought her title over the suit land and also sought possession of 32 K allegedly purchased by defendants No. 1 to 4 vide sale deed dated 26.09.1984.

3. Upon notice, defendants No. 5 and 6 did not appear to contest the suit. Defendants No. 1 to 4 contested the suit and filed written statement denying the averments made in the plaint. It was stated by the defendants No. 1 to 4 that no decree was ever passed in favour of the



plaintiff by the court and even if there was decree, the same had never been acted upon. Defendants alleged that they had purchased land measuring 32 K from Harbagh Singh vide registered sale deed for consideration of Rs.80,000/-. As such, they are the bonafide purchasers. The said defendants further stated that they had satisfied themselves regarding the title of Harbagh Singh from the revenue record. Possession was delivered to the defendants by Harbagh Singh on the date of execution of the sale deed. As such, dismissal of the suit was prayed for.

4. In replication, the plaintiff re-asserted her case and controverted the averments made in the written statements.

5. On the basis of the pleadings, following issues were framed: -

1. Whether the plaintiff is owner of the suit property? OPP.
2. Whether the plaintiff is estopped from filing of this suit in view of the acts and conduct? OPP.
3. Whether the suit is bad for non-joinder of necessary parties? OPD.
4. Whether the plaintiff has no cause of action or locus-standi to file the suit? OPD.
- 4A. Whether defendants are bonafide purchasers for value and without notice of the rights of the plaintiff, if any? OPD.
5. Relief.

6. Upon appraisal of the pleadings and the evidence led by the parties, the learned trial Court decided the issues No. 1 to 4A in favour of the plaintiff and against the defendants; and vide judgment and decree dated 21.08.1989, the learned trial Court decreed the suit of the plaintiff.

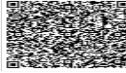


The appeal filed by the appellants/defendants No. 1, 3 and 4 was dismissed by the learned Additional District Judge, Bathinda vide judgment and decree dated 21.02.1991. Hence, the present second appeal by the defendants.

7. Learned counsel for the appellants submits that the defendants acquired title to the suit property measuring 32 K by virtue of registered sale deed dated 26.09.1984 duly executed by Harbagh Singh in their favour for valuable sale consideration of Rs.80,000/-. As such, they are the bonafide purchasers. Prior to buying the suit land, they had satisfied themselves regarding the ownership and possession of Harbagh Singh. As such, the learned courts below was in patent error in decreeing the suit of the plaintiff.

8. Per contra, learned counsel for the plaintiff/respondent No.1 vehemently opposes the prayer made on behalf of the appellants and submits that the plaintiff was owner in possession of half share of land in dispute measuring 144 K 6 M. Of the said land 32 K is alleged to have been illegally sold by Harbagh Singh to the defendants No. 1 to 4. It is contended that the said sale is illegal, null and void as Harbagh Singh had no title to the suit property; as the same already stood decreed in favour of the plaintiff vide decree dated 22.09.1983 (Ex.P3/A). It is contended that the plaintiff had led voluminous evidence before the learned courts below to prove her case. It is accordingly prayed that the present appeal be dismissed.

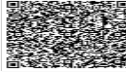
9. No other argument is raised on behalf of the parties.



10. I have heard learned counsel for the parties and also perused the case file and lower court record in minute detail.

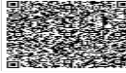
11. I find no merit in the submissions advanced on behalf of the appellants. The defendants are claiming to be owners in possession being bonafide purchasers of the suit land measuring 32 K. However, the admitted facts on record are that as per the Jamabandi for the year 1984-85 (Ex.P6), Harbagh Singh is shown to be joint owner of suit land along with Harbans Singh/defendant No.5. Harbagh Singh was addicted to intoxicants. This has been proven on record vide judgment (Ex.P8), as per which the court concerned had accepted the contention that thumb impression of Harbagh Singh on the pro-note therein in favour of one Basant Singh were obtained under the influence of intoxicants. This fact has also been attested to by the plaintiff as PW1 and Geja Singh PW3. Even no suggestion was put by the defendants to the said witnesses in cross-examination regarding that Harbagh Singh was not liquor addict.

12. In view of the fact that Harbagh Singh was liquor addict, half share of the land measuring 144 K 6 M was given to the plaintiff in lieu of maintenance before the village Panchayat and respectables and relatives of the plaintiff and Harbagh Singh. As already noted above, as change of ownership was not effected in the revenue record, she had filed civil suit No. 239 dated 01.09.1983 which was decreed vide decree dated 22.09.1983 (Ex.P3/A) (at page 42 of the LCR). As such, plaintiff was declared owner in possession of the suit land to the extent of half share of 144 K 6 M. However, almost one year after passing of the above said



decree dated 22.09.1983, Harbagh Singh allegedly executed the sale deed dated 26.09.1984 thereby selling 32 K of the half share of the plaintiff in land 144 K 6 M, to the defendants No.1 to 4. It is but trite to state that the suit land already stood decreed in favour of the plaintiff vide decree dated 22.09.1983. As such, on the date of execution of sale deed dated 26.09.1984, Harbagh Singh had no title, right or interest to the suit property; and therefore, he could not have transferred valid title to the defendants No. 1 to 4 herein.

13. The appellants have further argued that the suit land was purchased by them for valuable consideration of ₹80,000/-. However, even the said contention of the defendants/appellants remained unproven as admittedly, nothing was paid by the defendants before the Sub Registrar at the time of registration of sale deed. As per recital in the sale deed payment is stated to have been received by Harbagh Singh at his residence prior to execution of sale deed, however, there is no evidence whatsoever to indicate the same. In fact, defendant No. 4/Chamkaur Singh while appearing as DW1 has nowhere stated that he had paid consideration to Harbagh Singh. All that has been stated by the defendants in their evidence is that they had searched the revenue record and had satisfied themselves regarding the ownership and possession of Harbagh Singh over the purchased land. Defendants are alleged to have made the payment in cash. However, if so, they have failed to disclose their source of income. The payment of consideration amount remained unproven also because marginal witness of the said sale deed Jit Singh



DW2 and scribe of the sale deed Kedar Nath DW3 have not uttered a whisper about passing of the sale consideration. From the said facts, it is to be inferred that the defendants had taken advantage of intoxication of Harbath Singh to get the sale deed executed in their favour without payment of consideration. It is my view that the learned trial court correctly observed in this regard *“if the consideration amount had been paid to Harbath Singh, this fact might have been stated by the defendant Chamkaur Singh in his statement, so as to invite cross-examination on this point.”*

14. It is also relevant that the defendants have pleaded ignorance of the decree dated 22.09.1983 Ex.P3/A. However, the said assertion belies belief as the witness to the said deed in favour of the defendants was Harbans Singh, who is brother of Harbath Singh. Even if it is taken that Harbath Singh had not informed regarding passing of decree in favour of the plaintiff, it cannot be believed that this fact was concealed from the defendants by Harbans Singh. Accordingly, the learned courts below correctly held that the defendants had failed to prove that they are the bonafide purchasers of the suit land measuring 32 K for consideration.

15. The arguments of the defendants that they were not aware of the defective title of the vendor, is also liable to be rejected in view of the fact that a person is proven to be a bonafide purchaser for consideration. As such, purchaser only has to prove that he has bought the property from the person who was in possession; and he is also



required to prove that he had purchased the same for consideration. In the present case, the defendants have been unable to lead any evidence whatsoever to remotely indicate that any consideration had passed hands. Defendant No.4 appearing as DW1 had nowhere stated that he has paid consideration to Harbath Singh. As already noted above, all that has been stated that the defendants had checked the record of the Patwari and satisfied themselves regarding the ownership and possession of the land purchased by them. It has been argued on behalf of the learned counsel for the appellants that presumption is attached to the endorsement of the Sub Registrar. In this regard, I am in agreement with the observation of the learned first Appellate Court that the said presumption is rebuttable in a case such as present one, where there is no positive evidence regarding payment of consideration; therefore presumption automatically stood rebutted.

16. It has also been correctly observed by the learned first appellate court that the defendants could not plead ignorance of the defect of the title of the vendor as they are the residents of the same village. Admittedly, a Panchayat agreement to transfer half share of land in dispute in favour of the plaintiff by Harbath Singh was in the presence of the respectables of the village. It would therefore appear that the said fact must also be in the knowledge of the appellants; and they were only trying to take benefit of the revenue entry in favour of Harbath Singh and his alcohol addiction resulting in execution of the impugned sale deed.



17. Learned counsel for the appellants is unable to dispute or controvert the above said findings.

18. Hence, the present regular second appeal is hereby **dismissed.**

19. Pending applications, if any, stand disposed of.

**11.02.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

Whether speaking/reasoned: Yes/No  
Whether reportable: Yes/No