

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 988 of 2011 (O&M)
Decided on: 05.12.2017

Rajender Singh

.....Appellant

versus

Nanga@ Nanak (deceased) thr. his LRs. and Ors.

.....Respondents

RSA No. 4886 of 2011 (O&M)

Rajender Singh

.....Appellant

versus

Nanak Singh and Anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amit Jain, Advocate
for the appellant.

Mr. P.R. Yadav, Advocate
for respondent No.1 (i), (ii), (v) and (vi).

RAJBIR SEHRAWAT, JUDGE (ORAL)

This judgment shall dispose of two regular second appeals i.e. RSA No.988 of 2011 and RSA No.4886 of 2011. Both the appeals emerged from the same judgment, passed in two different suits. Hence, both the appeals are being decided by a common order.

For convenience, the parties would be referred herein, as the plaintiff and defendant, as they were described in the suit filed by Nanak Singh.

The brief facts of this case are that, Nanak Singh, who is respondent No.1 (being represented by LRs) in the present appeal, filed a suit for declaration of his title and for injunction, claiming that the defendant be restrained from interfering in possession of the plaintiff. It was pleaded that the suit property, which is land measuring 04 marlas; was owned by Manphool Singh, defendant No.1 in the suit, who was the real brother of Nanak Singh. Manphool Singh and Nanak Singh were otherwise co-sharers in the land. However, Manphool Singh entered into an agreement dated 08.07.1981 with Nanak Singh. As per the agreement, the said Manphool Singh agreed to sell the land to Nanak Singh. Consideration for the said transaction was fixed to be Rs.2000/-. The entire consideration was paid by the plaintiff Nanak Singh. It was further recorded in the agreement that the possession of the suit land has been given to the plaintiff. However, no date for execution of the sale deed was fixed by the parties to the agreement. It was further, pleaded that the plaintiff had become owner of the property; by virtue of Section 53-A of the Transfer of Property Act, 1882. However, taking advantage of continuing wrong entries in the revenue record, the defendant Manphool Singh intended to alienate the suit property, in favour of somebody else. It was further claimed, that plaintiff made numerous requests to the defendant not to alienate the suit property. However, the defendant was adamant. Therefore, the suit was filed.

Notice in the suit was issued. However, the service upon the Manphool Singh, was yet to be effected, because he had shifted to Rajasthan. On 20.11.2007. The counsel for the plaintiff got a recorded statement that defendant No.1-Manphool Singh had died. Still further, it was stated by the counsel that Manphool Singh had already sold the

property to the present appellant i.e. Rajender Singh. Accordingly, the plaintiff amended the plaint to implead the subsequent purchaser, i.e. the appellant in the present appeal, as defendant No.2 in the suit. The same was allowed. After being impleaded as defendant, the present appellant/defendant No.2 in the original suit, filed written statement contesting the claim of the plaintiff. It was claimed that the plaintiff had no cause of action and that the contesting defendant was the bona fide purchaser; for consideration and without notice. Ownership of the plaintiff over the suit property was denied by him.

Replication was filed, and the averments in the plaint were reasserted/re-affirmed by the plaintiff. The possession of the plaintiff over the suit property was asserted by the plaintiff in replication as well. The averments raised by the defendant were denied. The sale deed dated 23.07.2004 registered on 03.08.2004, in favour of newly added defendant was also questioned, as being fraudulent and, as not conferring any title upon the defendant.

After considering the pleadings of the parties, the Trial Court framed the issues as follows:

1. Whether the plaintiff is owner in possession of the suit property on the basis of agreement dated 8.7.1981. If so what effect? OPP.
2. Whether the plaintiff entitled to protection under Section 53-A of Transfer of Property Act? OPP.
3. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP.
4. Whether the plaintiff has no cause of action to file the

present suit? OPD.

5. Whether the plaintiff (?) is not properly valued for purpose of court fee and jurisdiction? OPD.
6. Whether the defendant Rajender Singh is bonafide purchase for value and consideration without notice. If so what effect? OPD.
7. Whether the plaintiff is not maintainable in the present case for?
8. Relief.

However, in the meantime, the defendant in the suit filed by Nanak Singh i.e. Rajender Singh had also filed his own suit for partition, claiming that the above said Manphool Singh has executed a sale deed in his favour on 23.07.2004, which was got registered on 03.08.2004. It was further submitted by him that mutation No.1108 in this regard, was also entered in the revenue record. Hence, he claimed possession over the suit property by way of partition. In this suit, Nanak Singh filed written statement pleading that Rajender Singh was not the owner in possession of the land. It was further claimed that on the date, when the sale deed was executed in his favour, even his vendor Manphool Singh was not competent to transfer the title to Rajender Singh. The sale deed was pleaded to be wrong, null and void. The pleadings regarding the agreement in favour of Nanak Singh were reiterated by him in written statement; in the second suit also. Defendants No.3 and 4 in the second suit also supported the claim of Nanak Singh.

On the basis of these pleadings, the Trial Court framed that issues in this suit as follows:

1. Whether the plaintiff and defendants are co-sharers in the suit land ?OPP.
2. If issue No.1 is proved whether the plaintiffs are entitled for partition of suit property? OPP.
3. Whether the sale deed executed on 23.7.04 and registered on 3.8.04 was hit by the provisions of lispendens and the present suit is not maintainable.
4. Whether the plaintiffs has no locus standi to file the present suit? OPD.
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
6. Whether the present suit is bad for deficient in the court fee? OPD.
7. Relief.

After framing of the issues, both the suits were consolidated for the purpose of evidence; treating the suit filed by Nanak Singh, as the primary suit. Accordingly, the common evidence was led in both the suits.

The parties led their evidence.

After hearing the parties and appreciating the evidence, the Trial Court held the agreement in favour of Nanak Singh to be validly executed and held the same to be proved by the plaintiff, Nanak Singh. This was held to be proved on the basis of testimony of PW-4 Rawat Singh and PW-5 Phool Singh, the testimony of the plaintiff Nanak Singh, and the testimony of Subhash Chand Gupta, the deed writer of the agreement.

On the other hand, the sale deed dated 23.07.2004 in favour of defendant-Rajender Singh, who was the plaintiff in the second suit, was also

held to be proved on the basis of testimony of PW-2, Satya Narain, the deed writer, PW-3 Banwari Lal, the attesting witness and PW-4 Rajender Singh himself.

Faced with this situation, the Trial Court was confronted with the proposition of Section 53-A of the Act. While, dealing with the contentions of the respective parties, the Trial Court held that, the case of the defendant-Rajender Singh in the suit of Nanak Singh stand proved. It was held that he has succeeded in proving that the defendant Rajender Singh had no notice of the agreement in favour of the plaintiff at the time when he purchased the suit land. The Trial Court held the defendant-Rajender Singh to be bona fide purchaser on the ground that there was no reflection of the agreement in favour of Nanak Singh in the revenue record. It was further recorded that Rajender Singh was not a witness to the agreement, claimed by the Nanak Singh. He is not relative of Nanak Singh and Manphool Singh. Therefore, it was held that it can hardly be said that, Rajender Singh; had any notice of the agreement of 1981. Hence, it was held that the defendant Rajender Singh; is entitled to the benefit of Proviso to Section 53-A of the Transfer of Property Act. Still further, the Trial Court held that the plaintiff; Nanak Singh; had failed to show, that he was ready and willing to perform his part of contract because he had not filed a suit for specific performance against Manphool Singh. However, the Trial Court also recorded that even if it is presumed that plaintiff Nanak Singh was ready and willing to get the sale deed executed, still, the agreement has not been registered; despite being accompanied with the possession. Therefore, this agreement does not stand in the way of the defendant-Rajender Singh, in his claim of the benefit of Proviso to Section 53-A of the

Act. Resultantly, vide a common judgment the suit filed by the plaintiff Nanak Singh was dismissed and the cross suit filed by the defendant-Rajender Singh was decreed; accordingly granting him, a preliminary decree of partition; for possession of his share in the suit property. Aggrieved against the judgment and both the decrees, Nank Singh had filed the appeals before the lower Appellate Court. However, Rajender Singh, the defendant in the suit of Nanak Singh; had not preferred any appeal or cross-objections, before the lower Appellate Court.

The lower Appellate Court, however, reversed the judgment and decrees passed by the Trial Court and allowed the appeals filed by Nanak Singh. Resultantly, the preliminary decree of partition passed in favour of Rajender Singh was set aside. The decree of dismissal of suit of Nanak Singh was reversed and the suit was decreed; qua granting him the permanent injunction. While, reversing the judgment and decree passed by the Trial Court, the lower Appellate Court recorded that the agreement in favour of Nanak Singh has already been held to be proved by the Trial Court and it has also been proved by the witnesses that Manphool Singh had given possession to the plaintiff Nanak Singh, and thereafter he has been residing continuously in the disputed plot. Therefore, the question of protection of Section 53-A of the Act is required to be considered. While considering this aspect, the lower Appellate Court, first of all, held that the agreement in question, claimed by the Nanak Singh did not require any registration because it was entered into between the parties, before the amendment of Registration Act w.e.f. 24.09.2001. The lower Appellate Court further held that the defendant-Rajender Singh himself, has admitted the possession of the appellant, Nanak Singh over the suit property, by

admitting that Nanak Singh had made a boring in the disputed property and that other co-sharer had also given possession of their shares to appellant Nank Singh, who have raised the boundary wall of the plot in question. Therefore, it was held by the lower Appellate Court that Rajender Singh shall be deemed to have the knowledge of the appellant's interest in the suit property. Hence, Rajender Singh was required to inquire from the appellant, as to the nature of his possession. Since, he has failed to make such inquiry from the appellant himself, therefore, the defendant-Rajender Singh cannot be held to be bona fide purchaser. Hence, it was held by the lower Appellate Court that the defendant-Rajender Singh is not entitled to the benefit of Proviso to Section 53-A of the Act. Accordingly vide a common judgment, the lower Appellate Court allowed both the appeals, filed by Nanak Singh. As a result, the suit of Nanak Singh was decreed qua permanent injunction and the suit filed by the Rajender Singh for partition was ordered to be dismissed; as mentioned above. Against the judgment and the decrees passed by the lower Appellate Court, Rajender Singh, defendant No.2 in the suit filed by Nanak Singh, has filed the present both the appeals.

While arguing the case, learned counsel for the appellant has submitted that the lower Appellate Court has not recorded a finding that the plaintiff Nanak Singh had fulfilled the ingredients of Section 53-A of the Act. Therefore, it is his submission that the benefit of Section 53-A of the Act, cannot be extended to plaintiff Nanak Singh, even if the defendant is held to be not bona fide purchaser, although, he has submitted that, the defendant has proved on record that he was a bona fide purchaser. He has proved revenue record, which show no entry regarding the agreement in

question. Still further, it is his submission that the possession of plaintiff Nanak Singh is also not exclusive, because the suit land is recorded as a joint holding of the plaintiff Nanak Singh and Manphool Singh along with other persons before the purchase by Rajender Singh and with Rajender Singh after the execution of the sale deed in favour of Rajender Singh, as per the mutation entered into revenue record. Learned counsel for the appellant has further submitted that the lower Appellate Court has faltered in law, in granting a decree for injunction in favour of the plaintiff Nanak Singh because the plea of Section 53-A of the Act, can be raised only, as a defence and the suit for injunction is also not maintainable in a claim based on strength of Section 53-A of the Act. It was further claimed by the appellant that despite having questioned the sale deed in favour of the defendant, the plaintiff has not formally challenged the sale deed in his favour by amending the suit. Therefore, the sale deed in favour of the appellant/defendant has remained intact. In the end, the counsel for the appellant again stresses the argument that the ingredients of Section 53-A of the Act have not been substantiated by the plaintiff Nanak Singh and hence, he cannot claim the benefit of Section 53-A of the Act. To support his arguments, learned counsel for the appellant relies upon the judgment of Hon'ble Supreme Court rendered in **2011(4) RCR (Civil) 669** titled **as Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana** and Another to contend that mere agreement to sell does not convey a title and therefore, suit for declaration of title on the basis of agreement referred to in Section 53-A of the Act, is not maintainable. The counsel further relies upon the judgment of the Hon'ble Supreme Court rendered in **2008 (1) RCR (Civil) 77** titled as **A.Lewis and Anr. Vs. M.T. Ramamurthy and Ors.** to contend

that if the person claiming the benefit of Section 53-A of the Act remain silent for a long time, and he does not take steps to get the sale deed executed, then he cannot be granted any benefit under this Section; because he has been sleeping over his rights. Learned counsel has also relied upon the judgment of this Court rendered in **2014(3) PLR, 56** titled as **Jarnail Singh Vs. Daljit Singh and Ors.** to contend that if the ingredients of Section 53-A of the Act, are not satisfied then, even the possession of the person claiming agreement is not to be protected by the Court. In the end, the counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in **2016 (3) RCR (Civil) 592** titled as **Guman Singh and Ors. Vs. Manga Singh (d) by LRs. and Ors.** to support his argument, that the plea of Section 53-A of the Act, can be taken, only as a defence and not as a positive basis for filing a suit, as plaintiff. It can be used only as shield and not as a sword.

On the other hand, learned counsel for the respondent/plaintiff has submitted that the plaintiff has proved on record the agreement in question. It is his further submission that even the Court below has held the agreement to be proved on record of the case. No appeal had been filed by the present appellant against that finding. Still further, it is submitted by the counsel for the respondent that he has proved all the ingredients, as required under Section 53-A of the Act. The counsel submits that, as per the terms of agreement, the entire amount of the consideration stood paid. Possession had already been taken by the plaintiff. Therefore, according to the learned counsel for the respondent/plaintiff, the part of the agreement required to be performed on the part of the plaintiff already stood performed. Nothing else, was required to be done by him for the maturity of the agreement into a

full-fledged sale. So far as the execution of the sale deed is concerned, it is submitted by the counsel that since the vendor Manphool Singh had shifted to Rajasthan, and was not readily available, therefore, he had no opportunity to get the sale deed executed. The counsel for the respondent/plaintiff further submits that Section 53-A of the Act can very well be invoked by a person for protecting his possession. For that purpose, counsel has relied upon the judgment reported in *AIR 1994 Bombay 254* titled as *Dharmaji alias Baban Bajirao Shinde, vs. Jagannath Shankar Jadhav in ce deceased by his heirs Bhanudas Jagannath Jadhav etc.*. Still further, it is submitted by the learned counsel that the defendant has abjectly failed to prove that he had no notice regarding the existence of agreement in favour of the plaintiff Nanak Singh. Therefore, he is not entitled to seek the protection of Proviso to Section 53-A of the Act. Counsel further submits that merely because the agreement in his favour is not reflected in the revenue record and the defendant claims to have verified from the revenue record; that does not exclude the notice to the defendant/purchaser, since he was residing in the house adjacent to the house of the plaintiff- Nanak Singh. Learned counsel for the respondent relies upon the judgement of this Court rendered in *2005 (3) RCR (Civil) 677* titled as *Bal Singh and Ors. Vs. Ravinder Singh and Ors.* Regarding the validity of the sale deed in favour of the defendant, the counsel submits that since the vendor of defendant-Rajender Singh could not have transferred the title, therefore, any sale deed claimed by the defendant is null and void, as claimed in the replication filed by the plaintiff.

Having heard, learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that

the counsel for the appellant has failed to substantiate his argument with reference to the record. So far as the agreement, in favour of the plaintiff Nanak Singh is concerned, the same has already been held to be proved by the Trial Court. That finding has become final also. Therefore, there is no dispute regarding the validity of the agreement in favour of Nanak Singh in the present appeal. However, the submission of the counsel for the appellant that the ingredients of the Section 53-A of the Act has not been fulfilled in the case, is also not sustainable. It has come on record and has been proved by the plaintiff that the possession of the suit land had been delivered to the plaintiff; at the time of agreement in question. This fact is recorded in the agreement also. Hence, the deposition of the witnesses examined by the plaintiff, regarding possession gets related to the recital in the agreement in favour of the plaintiff. This shows that the possession, in fact, had been delivered to the plaintiff at the time of execution of the agreement itself. Still further, the defendant-Rajender Singh has also admitted in cross-examination that he had the knowledge, that other co-sharers had given possession of their respective shares to the plaintiff Nanak Singh. He has even admitted in the cross-examination; the site plan of the property, as was pleaded and proved by the plaintiff. The site plain also shows the boundaries to the suit property. Although, defendant has asserted that boundary was raised by plaintiff after the purchase of the suit land by the defendant, however, he has not led any cogent evidence on this aspects. Otherwise also since the plaintiff was co-sharer in the suit property with his seller Manphool Singh, so after the purchase he shall be deemed to be in possession of share of Manphool Singh as well. Hence, the ingredient of Section 53-A of the Transfer of Property Act, regarding execution of the

agreement and taking of the possession stand proved by the plaintiff. So far as the remaining ingredients regarding doing something in furtherance of the agreement and readiness and willingness on the part of the plaintiff to perform his part of the agreement are concerned, the same also stand duly proved by him. It has come on record that after the possession was taken over by him, he has altered the status of the land by raising construction and installing the boring and other equipment over the suit land. This, he has done only in furtherance of the authority granted to him under the agreement in question. So far as the other ingredients, namely the readiness and willingness of the plaintiff to get the sale deed executed in his favour is concerned, the Section of 53-A provides two eventualities, i.e. the vendee should either have performed his part of agreement, or in alternative, he should be willing to perform his part of agreement. As has come on record in the present case, the part of the contract, which was required to be performed by the plaintiff qua this agreement, already stood performed by him, since he had already paid the entire amount of consideration and he had taken possession of the suit land, as a part of the performance of the agreement. Only thing, which was required to be done in that situation was; to be done by the vendor Manphool Singh only, by executing the sale deed. However, the same could not be done by him since Manphool Singh was not available, having shifted to Rajasthan. For this missing element, by any means, it cannot be said that the plaintiff has not performed his part of agreement, as enjoined upon him under the agreement in question.

The judgments cited by the learned counsel for the appellant are not helpful to the case of the appellant. The same are distinguishable on the facts of the present case. So far as the, judgment of *Suraj Lamp and*

Industries Pvt. Ltd. (supra) is concerned, the same is an authority on the point that the agreement referred to in Section 53-A of the Act cannot be used for claiming a title. However, in the present case, though the plaintiff had sought a declaration of title also, however, the same has not been granted by the Courts below to him. The plaintiff has been granted only an injunction in his favour qua his possession. Therefore, this judgment is not applicable in the present case. So far as the, judgement rendered in **A. Lewis and Anr. (Supra)** is concerned, the same is also distinguishable in the present case. As mentioned above, the plaintiff had already performed his part of the contract. Therefore, there is no silence or slumbering on his part. The only thing required to be done was the execution of the sale deed by vendor. For that also, admittedly, no date was specified. Hence, it cannot be said that the plaintiff was not justified in waiting for the vendor to execute the sale deed, as and when, he returns from Rajasthan. Otherwise also getting the sale deed executed immediately or within any specified time period is not a requirement under Section 53-A of the Act. So, the failure of the purchaser to get the sale deed executed within some reasonable time, though may be undesirable, yet it can not operate as a statutory bar against the statutory right of the purchaser guaranteed by Section 53-A of the Act. Needless to say that the desirability of an act and the legal requirement of such act are two different things. The mere desirability can not be raised to the level of legal necessity, particularly, when it is not prescribed by the relevant statutory provision. The reliance by the learned counsel for the appellant upon the judgment in case of **Jarnail Singh** (supra) is also not relevant for the purpose of present case. As stated above, the ingredients of Section 53-A of the Act has been fully established by the plaintiff in the

case. He has not been granted any declaration of his title. However, so far as, the injunction part is concerned, he has claimed in the suit and he has satisfied the ingredients of the Section 53-A of the Act, therefore, this judgment does not stand in his way, as such, to deprive him the statutory protection.

The last judgment sought to be relied upon by the counsel for the appellant is the judgment rendered by the Hon'ble Supreme Court in ***Guman Singh and Ors.*** (Supra) to contend that the plea of Section 53-A of the Act can be taken only as a defence and it cannot be made a basis for filing a suit, by coming as plaintiff. However, this judgment is also not applicable in the present case. A perusal of this judgment shows that the Hon'ble Supreme Court made these observations in that case regarding suit for title/ownership. Therefore, it was held that since, ownership was not proved, therefore, for the purpose of ownership, the agreement claimed by the person in that case qua Section 53-A of the Act, could not have been used for claiming title. So far as the suit qua protection of possession is concerned, the Hon'ble Supreme Court has not laid down the law, as claimed by the counsel for the appellant. The Hon'ble Supreme Court has only observed that in that particular case, since the transaction claimed by the person for availing the benefit of Section 53-A of the Act was compulsory required to be registered; and the same was not registered, therefore, the same could not be taken into evidence for any purpose, whatsoever, for his benefit. Therefore, the suit for injunction was also held to be not maintainable on his part. However, in the present case, as notice above, the lower Appellate Court has rightly held that the agreement in question did not require any registration. Therefore, the plaintiff could not

be non-suited, even for the purpose of injunction, claimed by him. Hence, the Court below has rightly granted the injunction in favour of the plaintiff.

Otherwise also, Section 53-A of the Transfer of Property Act creates a benefit in favour of a person, who has a prior agreement in his favour- along with the possession of land mentioned in the agreement. This Section creates a bar against, the original owner or a person claiming title under him, for claiming any right title or interest qua the land mentioned in the agreement, during the subsistence of such agreement. Therefore, if his possession is threatened then it is only the suit for injunction, which can be filed by a person, claiming benefit of Section 53-A of the Act. Needless to say that, if such a person is sued against then he will be entitled to take the same, as defence also. Hence, so far as the possession is concerned, once a person claiming benefit of Section 53-A of the Act; shows and proves the ingredients of Section 53-A of the Act along with the requirement of registration of the same, if any, then he can, very well, use the agreement, as a basis for filing a suit, as plaintiff also. His remedy is not limited to take the defence, in case a suit is filed against him.

So far as the plea of bona fide purchaser, raised by the appellant is concerned, the same also deserves to be rejected. He has claimed that he is a bona fide purchaser. A specific issue was framed regarding his status, as a bona fide purchase. The onus of the proof of the same was upon the defendant-Rajender Singh. To claim the benefit of Proviso to Section 53-A of the Act, the defendant was required to prove that he had no notice of the transaction in favour of the plaintiff. However, beside making a claim that he inspected the revenue record, the defendant has not laid any factual foundation or led any evidence on this point. So far as the entries in the

revenue record are concerned, the same are irrelevant in the present case. Although, the land continues to be recorded in the revenue record, however, it is admitted between the parties that this land has become part of the residential area. In the revenue record also, it is recorded, as '*gair mumkin gait*' (some open land adjacent to the residential area, for being used for tethering cattles and for storage of fodder etc.) This, by no means, can be treated as an agricultural land. The presumption of the land being agricultural land, in this case, is also excluded by the very fact that, the partition, which was sought by Rajender Singh, has been sought through the Civil Court and not through the Revenue Authorities. In view of this, the judgment rendered by this Court in **2005 (3) RCR (Civil) 677** titled as ***Bal Singh and Ors. Vs. Ravinder Singh and Ors.*** is fully applicable.

The lower Appellate Court is right in holding that once the defendant-Rajender Singh admitted that other co-shares had also given possession to the plaintiff then it was bounden duty upon him to enquire from the plaintiff also; before the proceeding further to purchase the land in question, since, the plaintiff, admittedly, is a co-sharer in the suit land even with his seller Manphool Singh. However, there is nothing on record, either pleaded, deposed or otherwise proved on record; to show that any inquiry was ever made from the plaintiff by the defendant-Rajender Singh before purchasing the suit land from Manphool Singh. Otherwise also, the facts proved on record show that the defendant was residing in the adjacent house. The site plan, as produced by the plaintiff; has also been admitted by the defendant. Still further, it has been categorically admitted by the defendant that he is not aware, as to whether, the plaintiff had taken possession of the suit, at the time of agreement, which he claims in his

favour or not. This is a kind of evasiveness on the part of the defendant regarding status of possession. This also shows that he had the knowledge of the fact that the plaintiff had taken possession of the suit land at the time of agreement mentioned in the plaint. Hence, it was incumbent upon the defendant-Rajender Singh to inquire from the plaintiff before purchasing the said land. Otherwise also, since the plaintiff was already a co-sharer with Manphool Singh, so he shall be deemed to be in possession of every inch of land with other co-sharer. Hence, since no reasonable inquiries has been made by the defendant-Rajender Singh before purchasing the suit land, therefore, he cannot be held to be a bona fide purchaser. Another aspect, which need to be noted is that the plaintiff Nanak Singh has categorically deposed that the defendant had the knowledge of existence of agreement in favour of Nanak Singh. Despite that even Nank Singh has not been cross-examined on this point specifically. This also shows that the defendant-Rajender Singh had the knowledge of the existence of the agreement in favour of Nanak Singh.

No other argument was raised.

Hence finding no perversity, the judgment and decree passed by the lower Appellate Court are upheld.

In view of the above, finding no merits, both the appeals are dismissed.

5th December , 2017

Manju

[RAJBIR SEHRAWAT]

JUDGE

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