

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.3437 of 2013
Date of Decision: August 10, 2015

Sohan Lal

...Petitioner

Versus

Hardev Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.J.K.Singla, Advocate,
for the petitioner.

Mr.Binderjit Singh, Advocate,
for respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

The challenge in the present revision petition is to the order dated 9.5.2013 (Annexure P-6), whereby the Additional Civil Judge (Senior Division), Phul has dismissed the application filed by the petitioner-plaintiff seeking amendment of the plaint by challenging two transfer deeds, alleged to have been executed by defendant No.1 in favour of his son Kaur Singh on 20.7.2009 and 18.6.2010.

Mr.J.K.Singla, learned counsel appearing on behalf of the petitioner submits that vide impugned order the trial Court has failed to notice the aforementioned averment categorically culled out in para 2 of the

application and there is no adjudication of this fact despite the fact that the aforementioned transfer deeds have been admitted by defendant No.1 in the reply.

Mr.Binderjit Singh, learned counsel appearing on behalf of respondent-defendant Nos.1 to 3 submits that the amendment has been sought at belated stage and the factum of these transfer deeds was in the knowledge of the petitioner-plaintiff.

I have heard the learned counsel for the parties.

It is a matter of record that the suit was filed on 14.11.2008 for seeking specific performance of the agreement dated 13.5.2005. The petitioner-plaintiff had also challenged two transfer deeds bearing No.4890 and 4891 dated 27.1.2006, including the mortgage deed. However, during the pendency of the suit, the aforementioned transfer deeds dated 20.7.2009 and 18.6.2010, which is a subsequent event, have been effected by defendant No.1 in favour of his son Kaur Singh. The trial Court has not adjudicated upon the aforementioned fact despite there being admission in the reply. The aforementioned transfer deeds, in my view, are hit by provisions of Section 52 of the Transfer of Property Act, 1882 as these would be hit by the doctrine of *lis pendence*. It would be apt to refer the provisions of Section 52 of the Act, *ibid*, which reads thus:-

“52. Transfer of property pending suit relating thereto.-
During the [pendency] in any Court having authority 2[3
[within the limits of India excluding the State of Jammu and
Kashmir] or established beyond such limits] by 4[the Central
*Government] 5[***] of 6 [any] suit or proceedings which is*
not collusive and in which any right to immovable property is

directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

1[Explanation].-For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]”

On going through the aforementioned provisions, it is evident that the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party. The fact remains that defendant No.1, during the pendency of the suit, has transferred the property vide aforementioned transfer deeds in favour of his son, who had further mortgaged the same with respondent No.4.

In my view and in view of the provisions of the Transfer of Property Act, the transfer deeds would be hit by the doctrine of *lis pendence*. The petitioner-plaintiff shall be at liberty to take this objection at the time of arguments by citing law.

In view of what has been observed above, the impugned order dated 9.5.2013 (Annexure P-6) is hereby set-aside with the observation that any mortgage/transfer affected by defendant No.1 during the pendency of

the suit would be hit by the doctrine of *lis pendence*.

With the aforementioned observations, the revision petition is disposed of.

August 10, 2015
ramesh

(AMIT RAWAL)
JUDGE