

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6558 of 2014 (O&M)

Date of decision: 29.05.2015

Ramayan Ranjan

... Petitioner

versus

Janeshwar Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Saravpreet Gurna, Advocate for the petitioner.

Mr. Deepak Gupta, Advocate for respondent No. 5.

K.Kannan, J.

5th respondent is an only contesting respondent. Notice to respondent Nos. 1 to 4 dispensed with for present. The requirement of fresh notice will be considered at the time of arguments, depending on the contentions raised and whether respondent Nos. 1 to 4 will be affected by any order the Court passed.

In an application for the execution of money decree, against the judgment debtors, the property attached was the property purchased by the 3rd party during the pendency of the suit. The objection of the purchaser was that the property belonged to him. The Court has allowed the objection to prevail and had dismissed the application filed by the decree holder challenging the genuineness of sale. The order allowing the objection must be actually construed as a claim made by 3rd party for reason of attachment and consequently the order has the effective decree under Order 21 Rule 58(4). Since the decree holder has sought for adjudication of the claim regarding the validity of the sale, the only proper procedure to be adopted was to adopt a full fledged trial regarding validity of sale and title to the property. The Court has summarily rejected the petition. The revision petition is filed against

both the orders.

I thought for a while whether the party should be advised to prefer an appeal against the order allowing the objection raised by the subsequent purchaser in a regular appeal but this order has come along with yet another order rejecting a prayer of the decree holder that the claim must be adjudicated in accordance with law. That order is consequential and surely revisable, for, the Executing Court has adopted the procedure which is unknown to law. The Court could not have allowed for a 3rd party objector who is a subsequent purchaser to walk away with the property without due consideration of whether the property purchased by him was bonafide or not.

The manner of adjudication of claimants by 3rd party when the decree holder contends that the sale was not bona fide would require a full fledged consideration of the validity of the sale and whether the sale was fraudulent in the manner described under Section 53 of the Transfer of Property Act. The relevant issues of consideration has been set in a decision of the Hon'ble Supreme Court in Abdul Shukoor Saheb Vs. Arji Papa Rao, AIR 1963 SC 1150, which explains the law in its pre-amendment position to Act 104 of 1976 where a claim under Order 21 Rule 58 was summary, and if any order was passed, it was required to be brought by means of separate suit. The law has undergone a change of procedure when Act 104 of 1976 by introduction of Clause 4 to Order 21 Rule 58 CPC that makes the effect of the order as a decree and requiring the Court to adjudge on title to assess whether the attachment of property could be denied or it would be required to be raised on the basis of claim of the 3rd party. The Supreme Court has explained in the judgment above that the principles of determination of bona fides of purchase as enunciated in Section 53 of the Transfer of Property Act will have to be incorporated and read into the claim of adjudication in the claim at the execution stage.

I have brought out the law for the benefit of the parties and for the Courts below, since it had adopted a wrong procedure and the

same is not repeated. The orders passed are set aside and I direct the claim of the 3rd party purchaser to be adjudicated, as if it were a claim under Order 21 Rule 58 and assess the evidence and render a judgment in the light of the judgment of Supreme Court referred to above. The impugned orders are set aside and remitted to the Court below for consideration in the light of the observations made above.

(K.KANNAN)
JUDGE

29.05.2015

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