IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CR 6955 of 2013

Date of Decision: August 6, 2015

Yogesh Kumar

…..Petitioner

Vs.

P.V. Trade Link and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. M.S. Sachdev, Advocate
for the petitioner.

Mr.O.P. Goyal, Sr. Advocate with
Mr. Anandeshwar Gautam, Advocate

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M.M.S. BEDI, J.

The plaintiff has preferred this revision petition under Article 227 of the Constitution of India, aggrieved by the order dated 15.7.2013 passed by the learned Additional District Judge, Jalandhar, allowing the first appeal of defendant No. 5 (respondent No.1) and Suresh Kumar/defendant No. 1, now represented by his legal heirs (respondents No. 2 to 5), dismissing the application of the plaintiff/petitioner for interim injunction filed under Order 39 Rule 1 and 2 CPC in his suit for separate possession and permanent injunction.

The learned trial Court while deciding the application under Order 39 Rules 1 and 2 CPC filed by the plaintiff/petitioner had restrained defendant No. 5 from raising any construction over the suit property and also restrained respondent No.5 from interfering in the possession of the plaintiff/petitioner till the final decision of the suit. The lower Appellate Court has reversed the said finding vide impugned order.

The brief facts which are necessary for decision of the present case are that the plaintiff/petitioner had filed a suit for declaration that two sale deeds dated 3.5.2011 executed by defendant No.1 Suresh Kumar, Mukesh Kumar, Prakashwanti and Manju in favour of defendant No. 5 (respondent No.1) M/s P.V. Trade Link Venchers Private Limited with regard to the joint Hindu Family property known as Plot No. 2 (VII), mentioned in heading of the plaint, is without legal necessity and without payment of consideration having been executed illegally and unlawfully, in connivance of defendants No.1 to 4 with defendant No.5 with a view to defeat the rights of the plaintiff/petitioner. He claimed that the sale of joint Hindu family property vide two sale deeds of same date are null and void. Claiming himself to be in actual physical possession of the property in dispute, he also sought a decree for permanent injunction to restrain defendant No.5 (respondent No.1) through its managing Director, Directors or their assignees or employee etc. from interfering into the possession of the suit property. The plaintiff/petitioner is real brother of defendants No. 1, 2 and 4 and son of defendant No.3. The plaintiff/petitioner claims that defendant No. 4 Manju having married she ceases to be a member of HUF. He has claimed in the suit that there are only 4 members of HUF. Suresh Kumar is the 'karta' of both the HUFs known as M/s Rajinder Kumar and sons and M/s Ameen Chand Bhalla Nath. The properties belonging to two HUFs have been sold by defendant No.1 Suresh Kumar in connivance with defendants No. 2 to 4 without any legal necessity regarding which many suits are pending in different courts. A suit for partition by metes and bounds has also been filed by the plaintiff including the property of Surya Hotel/Palace which is pending in Court of Civil Judge (Junior Division), Jalandhar. Defendants No. 1 to 4 have misused the funds of HUF and that defendant No.1 Karta of the HUF has not kept any account. The sale proceeds of the HUF property has been transferred by defendants No.1 to 4 unlawfully to their respective wives/children/husbands/relations etc. The plaintiff has also filed a separate suit for rendition of accounts of both HUFs which are still pending. A suit for partition of property by metes and bounds is also pending before the Civil Judge (Junior Division), Jalandhar but later on it was got dismissed by Prakashwati-plaintiff. The plaintiff claimed that the HUF property has been alienated by defendants No.1 to 4 for Rs. 11,70,00,000/- and Rs. 5,50,00,000/-vide two separate sale deeds to defendant No.5 without any legal necessity, as such, the sale deeds do not have any legal impact on the rights of the plaintiff in joint Hindu family property. No sale consideration of Rs. 5,20,00,000/-was paid in front of Sub Registrar. The plaintiff has pleaded that legally the possession of Joint Hindu family property cannot be delivered to defendant No. 5 and that it has got no right to take possession of the property and that the purchaser can only claim partition if sale is for legal necessity. It is also pleaded in the plaint that defendant No.5 (respondent No.1) has started claiming that it has taken possession of the property which claim is wrong and unlawful.

So far as position of Mukesh Kumar-defendant No.2 is concerned, the plaintiff claims that Mukesh Kumar-defendant No.2 was merely a tenant, as such, he could not part with possession and that he was never having possession of specific portion of property as owner. The plaintiff has pleaded that he was in possession of the property and running Surya Hotel on the property in dispute but in connivance with the police, Mukesh Kumar, his brother got proceedings initiated under Section 145 Cr.P.C. The said proceedings were disposed of by Sub Divisional Magistrate, Jalandhar, without following procedure and revision was pending against the said order, which was dismissed but a petition under Section 482 Cr.P.C. is pending against that order. The cause of action has been claimed by the plaintiff to have arisen when certain material had been collected and through labour an attempt was made for demolishing the building to raise construction.

Written statements were filed by Suresh Kumar/defendant No. 1, Mukesh Kumar, defendant No.2 and defendant No.5 purchaser, taking the plea that both the HUF properties have been sold for legal necessity as the properties were under mortgage for liability of Punjab National Bank and Central Bank of India to the tune of crores of rupees and Punjab National Bank had already issued possession notice on 10.3.2004 as the debt liability of Rs. 36,88,62,423/- and Central Bank of India had also issued possession notice for recovery of Rs. 1908762.65 on 9.10.2007 regarding the properties of HUFs. Defendant No.1 as Karta was constrained to sell the properties of HUFs for a sum of Rs. 20 crores to pay part of the debt to the Punjab National Bank, in favour of defendant No. 5 and on receipt of earnest money of Rs. 3 crores from Harbhajan Singh and Narender Kaur, the intending buyers had paid Rs. 1536000 to Punjab National Bank. Defendants No.1 and 2 were suffering from cancer and eye disease respectively. As per the wish of Harbhajan Singh and Narender Kaur, sale deeds were executed in favour of defendant No. 5 and possession was handed over to defendant No.5 at the time of execution of the sale deeds. It was pleaded that defendant No. 4-sister did not cease to be the member of HUFs and that the plaintiff was having 1/5th share and not 1/4th share in the property. It was further pleaded that defendants No.1 to 4 have not sold the properties of HUFs. Defendants claim that out of 164 marlas of the land of Surya Palace, land measuring 130 marlas has been sold of as alleged and the sale deed was executed after receipt of full consideration by fetching appropriate sale consideration, which was actually not more than Rs. 5 crores. The plaintiff has made no efforts to save the property from the bank liability.

Defendant No.5 (respondent No.1) has filed separate written statement seeking to justify that the HUFs property has been purchased by it for legal necessity as Suresh Kumar was suffering from cancer, both the legs of his wife were not working. Mukesh Kumar, brother was suffering from eye disease and sister of Suresh Kumar, Yogesh Kumar was of marriageable age and defendants No.1 to 4 had maintained her future life peacefully. They were in need of huge money. A sum of Rs. 15365000/-out of earnest money of Rs. 30000000/-had been paid to the bank in order to discharge the liability towards the bank as the bank had issued notice under the Securitization and Reconstruction of Financial Assets Act to auction the property of HUF. It was denied that the plaintiff/petitioner was running Surya Hotel on the property in dispute. The proceedings initiated under the Act have been decided against the plaintiff and defendant No.5 being owners have a right to raise construction.

In the light of the pleadings of the parties, the plaintiff/ petitioner claim that he had a prima facie strong case in his favour and that balance of convenience lay in his favour and that he was likely to suffer irreparable loss in case the injunction is not granted.

Mr. M.S. Sachdev, learned counsel for the plaintiff- petitioner has vehemently contended that the property in dispute which is subject matter of the two sale deeds executed on May 3, 2011 are concerned, is admittedly a joint Hindu family property which is also known as Plot No. 2 (vii) and is known as Surya Palace/ Hotel situated at Green Park, Cool Road, Jalandhar with regard to 19 marlas of land out of total land measuring 6 kanals 10 marlas and the second sale deed in favour of respondent No.1 is with regard to 40 marlas of the land out of total land measuring 6 kanals 10 marlas. His main contention is that the sale deeds are without any legal necessity and without payment of any sale consideration having been executed by respondents No.2 to 5 in connivance with respondent No.1 with sole objective to defeat the rights of the petitioner. Plaintiff claims that he is not bound by the registered sale deeds and that neither any possession has been delivered of any portion of the property to respondent No.1 nor any possession could be delivered regarding the joint family property. In support of his contention, he has placed strong reliance on **Gajara Vishnu Gosavi Vs. Prakash Nanasaheb Kamble and others**, (2009) 10 SCC 654 wherein it had been observed that purchaser of a coparcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property. In the said case the suit of appellant-Gajara Vishnu Gosavi for declaration that she was owner of half part of the suit property and was in actual physical possession thereof with a further relief of injunction against the defendant- respondent causing any obstruction in her possession was dismissed as she had claimed to have purchased western half of the suit property and that she had not been handed over the possession. The suit was dismissed by the Courts on the ground that neither any partition of the property had taken place nor the plaintiff could claim any specific share in the property. She could only be a co-sharer in common and joint possession and the question of handing over of possession to the plaintiff- appellant or her vendee did not arise. In the said background where there was a sale of undivided share of one co-sharer and on account of existence of statue putting an embargo on fragmentation of holdings, relying upon **Ramdas Vs. Sitabai and others**, (2009) 7 SCC 444, **M.V.S.Manikayala Rao Vs. M. Narasimhaswami**, AIR 1966 SC 470 and **Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain**, AIR 1953 SC 487, it was held that purchaser of coparcener undivided interest in joint family property is not entitled to the possession of what he had purchased but he has got a right of partition to sue for partition of the property and ask for his share in the suit property.

He has also relied upon **Ram Murti Sharma and anr. Vs. Prem Kumar and others**, 2011 (2) CCC 570 (P&H) wherein it was observed that a co-sharer can transfer his undivided share but no possession can be handed over to the vendee unless the property is partitioned by metes and bounds amicably or through mutual settlement or by a decree of the Court and that vendee from co-owner shall be entitled for possession through partition only. It was a case where the petitioner Ram Murti Sharma had filed eviction petition against tenant Prem Kumar, respondent No.1 and respondents No.2 to 4 claimed to have entered into the possession of the property as tenant pursuant to a subsequent lease deed executed by other co-owners and the Court was required to determine whether respondents No.2

to 4 claiming themselves to be tenant of the property in dispute on behalf of other co-owners could resist a decree for eviction or possession obtained by the petitioner against tenant Prem Kumar. Relying upon the judgment of Supreme Court in **Ramdas** case (supra), it was held that a co-sharer can transfer his undivided share but no possession could be handed over to the vendee unless the property is partitioned by metes and bounds amicably or through mutual settlement or by decree of the Court and that the vendee from co-owner shall be entitled for possession, through partition only. In the circumstances of said case Court observed that respondents No.2 to 4, the subsequent purchasers from the alleged co-owners and other co-owners conspired with sitting tenant Prem Kumar to deprive the landlord- petitioner from property in dispute by taking stand that Prem Kumar was handed over the possession prior to respondents No.2 to 4 came into possession of the property as tenant pursuant to the sale deed allegedly executed by other co-owners. It was not laid down as an absolute rule of law in the said judgment that the vendee to whom property has been sold by 'karta' of the family regarding a joint Hindu Family cannot be delivered possession.

It is pertinent to mention that the Apex Court was dealing with a case where three Courts had recorded a finding of fact that there had been no partition of the suit property and undivided share of the property had been sold by one co-sharer in contravention to the statute.

Counsel has also placed reliance on **Shri Tilak Raj Vs. Smt. Kaushalya and others**, 2011 (1) RLR 475 where the plaintiff- appellant

Tilak Raj had filed a suit for possession of suit property in the capacity as co-sharer against his brother defendant who had sold undivided share in the suit property, the Court had upheld the orders passed by the Courts below dismissing his suit seeking possession of the property holding that he was not the exclusive owner and that being a co-sharer with defendant he could not claim possession of the entire suit property. Counsel also placed reliance on **M/s Orient Craft Infrastructure Ltd. Vs. Smt. Subhadra and others**, 2010 (4) LH (P&H) 3036 wherein it was observed that the only remedy available to a purchaser from co-owner is to file a suit for partition and that co-sharer can transfer his undivided share and that no possession could be handed over to the vendee unless property is partitioned by metes and bounds amicably or through mutual settlement. He has also argued that the lower Appellate Court has wrongly interfered in the order passed by the trial Court granting ad-interim injunction to the plaintiff- petitioner. He referred to **Pishora Singh Vs. Smt.Lajo Bai**, 1975 PLR 30 in support of his contention that grant of ad-interim injunction is within the jurisdiction of the trial Court and the Appellate Court should be slow in upsetting the decision of the trial Court.

Counsel for the petitioner has also argued that the entire sale consideration having not been paid, the registered sale deeds become null and void as cheque issued for part of the sale consideration was dishonoured, meaning thereby that the sale deeds are without consideration and not binding on the rights of the sellers.

On the other hand, counsel for defendant- respondent No.1 has contended that the lower Appellate Court has taken into consideration the circumstances indicating that the sale deed executed in favour of respondent No.1 were for legal necessity as the bank loans had to be discharged by sale of the property and that the major part of the sale consideration had been deposited with the bank by respondent No.1, in order to discharge the liability of loan. The 'karta' and the coparcener Mukesh Kumar were seriously ill and they needed money for their treatment. Besides this, the circumstance of marriage of the daughters of the members of joint Hindu family was an impending need which required sufficient money as such act of the 'karta' while selling the property was nothing but an act of good management by a 'karta'. The plaintiff had earlier filed a number of suits for permanent injunction to obstruct the alienation. He has contended that the coparcener cannot file a suit for injunction against 'Karta' but he can only challenge the alienation made by the 'karta'. Prima facie the sale of the HUF property is for legal necessity and that the possession having already been delivered to the defendants after discharge of liability of the banks as such it cannot be restrained from enjoying the property by raising construction or by alienating the same.

I have heard learned counsel for the parties and gone through the judgment of the trial Court as well as of the lower Appellate Court in context to the pleadings relating to law and the material available on the record and I am of the view that the order passed by the lower Appellate

Court does not warrant any interference as the lower Appellate Court has minutely examined the legal and factual aspects to determine whether the plaintiff – petitioner has got prima facie a strong case in his favour. The Court appears to have rightly considered that the balance of convenience does not lie in favour of the plaintiff and that no irreparable loss will be suffered by the plaintiff- petitioner.

In order to determine whether the plaintiff who is a member of HUF has got prima facie case in his favour so far as his claim regarding title and possession as a member of HUF is concerned, I have carefully perused the registered sale deeds executed by Rajinder Kumar and sons 'HUF' through its 'karta' Manager Suresh Kumar and co-Manager Mukesh Kumar. It is settled principle of law in context to the sale of HUF property that it is for the vendee generally to establish that the sale deed of a joint Hindu family property is for the purpose of legal necessity. The contents of the registered sale deeds signed by both the parties tentamounts to acknowledgement of the fact that the averments in the registered documents are correct. The defendants have specifically pleaded that the property in dispute had been the subject matter of proceedings under SARFAESI Act and after acquisition the bank was bent upon to dispose of the same at a lesser price. A property sold to re-pay the loans of the bank which in the present case had gone to the extent of Rs.85 crores is a legal necessity for the 'karta' to dispose of the property of 'HUF' and that too for the benefit of members of 'HUF'. So far as the plaintiff- petitioner is concerned, it is not his case that he was not aware of the liability of the members of the 'HUF' towards the bank or regarding the proceedings under SARFAESI Act. The defendants have placed on record documents indicating that the 'HUF' property was under mortgage for debt liability to PNB and Central Bank of India to the extent of crores of rupees and possession notice dated March 16, 2004 had been issued by PNB and Central Bank of India for a sum of Rs.368862423/- and Rs.19087020.65/- on March 16, 2004 and October 9, 2007 respectively, pertaining to the 'HUF' property in dispute. The payment of sum of Rs.1,53,65,000/- paid by defendant No.5 to PNB is sufficient enough to arrive at a prima facie conclusion that the sale is for legal necessity. Defendants No.1 and 2 had been suffering from cancer and eye disease. The factum of daughter of three members of 'HUF' being of marriageable age is specifically mentioned in the sale deeds. Prima facie the sales are for legal necessity. So far as the transfer of possession to respondent No.1 is concerned, all the defendants have admitted in their written statement that the possession had been delivered to defendant No.5 (respondent No.1). Presumption of truth is attached to the contents of registered documents. Besides this, the plaintiff has miserably failed to establish by producing any material on the record that he is in actual physical possession of the property or that the possession is not delivered. So far as the judgments cited by learned counsel for the petitioner that the purchaser of 'HUF' property can only seek partition, are not applicable to the facts of this case as the possession has actually been transferred to respondent No.1. When the trial Court has restrained respondent No.1 to raise any construction on the property is concerned, it is indicative of the fact that the possession had actually been delivered to him.

So far as the contention of learned counsel for the petitioner that there is a provision in the registered sale deeds that in case the cheques relating to the sale considerations are not encashed, the sale deeds shall be treated as cancelled. In this concern, he has referred to a complaint under Section 138 of the Negotiable Instruments Act, annexure P-7, to emphasize that three cheques worth Rs.1.47 crores and two other cheques of Rs.1 crore each had been dishonoured as such the sale deeds will be deemed to have been cancelled.

I have considered the said contention and I am of the opinion that the registered sale deed does not automatically become null and void in case any cheque of sale consideration has been dishonoured after the execution of the registered sale deed. It is not out of place to observe here that the offence under Section 138 of the Negotiable Instruments Act is a compoundable offence and on payment of the amounts of the cheques, the entire sale consideration will be deemed to have been paid. It is not a case where the sale consideration could be said to be a nullity. It is not out of place to observe here that the condition regarding cancellation of sale deed on non-clearance of cheques makes the agreement voidable and not void. The plaintiff- petitioner has challenged the sale deeds without affixing the Court fees.

Counsel for the respondents has submitted that on account of plaintiff- petitioner having interrupted in the peaceful enjoyment of the property by respondent No.1 and for having filed a complaint under Section 138 of the Negotiable Instruments Act, respondent No.1 has deferred the payment of sale consideration. It was argued on behalf of the respondents that the defendants have got no intention to not to pay the amount of the cheques, in case the controversy between the members of 'HUF' is settled inter-se.

In the present case, the property in dispute being a joint Hindu family property having been alienated by 'karta' of the family who was competent to alienate the same and the defendant- purchasers having established prima facie that the alienation is not adverse to the interest of the joint Hindu family and is for legal necessity, it is apparent that being within the competence of the 'karta', the plaintiff does not have any strong case in his favour especially when he has not been able to establish his exclusive possession over the property. A 'Karta' of the family is empowered to alienate the property despite the dissent of other coparcener when the alienation is unavoidable and the transfer is in the interest of family to protect the interests of the family; the right of 'karta' to alienate joint Hindu property in cases of legal necessity, benefit of estate; and as an act of indispensable duty binds the other coparceners by the act of the 'Karta'. When 'karta' exercises power of alienation in the aforesaid exceptional circumstances, the consent of other coparcener is implied. Such an authorization is also called 'judicial" when either the other coparceners do not consent to the alienation or are minors, but in the present case the alienation is for one of the above said three permitted purposes.

In the present case the course of action taken by the 'karta' is such as an ordinary prudent person would have taken with respect to the property. The facts and circumstances of the present case clearly reflect that the act of 'karta' is within his competence and the defendant-respondent alienee/ transferee has been able to establish that it acted bonafide and that there was necessity as per the parameters laid down in the classic judgment in **Hunoomanpersaud Panday Vs. Mussumat Babooee Munraj Koonweree**, 1856) 6 MIA 393. The balance of convenience does not lie in favour of the plaintiff- petitioner on account of the sale deeds prima facie having been executed for legal necessity.

Taking into consideration the circumstance that no irreparable loss will be suffered by the plaintiff-petitioner in case respondent No.1 is permitted to raise construction over the property in dispute, the plaintiff-petitioner having not been able to prove that he has got a prima facie strong case or that irreparable loss will be suffered by him in case interim injunction is not granted to him, the revision petition is dismissed without prejudice to the rights of the 'HUF' vendee to recover the amount, if any, pertaining to the cheques which have been withheld from encashment. The application for interim injunction filed by the plaintiff- petitioner is also dismissed and the order of lower Appellate Court is upheld. Nothing said in this order will prejudice the rights of the parties during trial.

August 6, 2015 (M.M.S.BEDI)
sanjay JUDGE