

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ESA 25 of 2015

Date of Decision: April 29, 2015

Sumer Singh

.....Petitioner

Vs.

Beer Sen and another

.....Respondents

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

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Present:- Mr.V.B. Aggarwal, Advocate for the appellant.

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M.M.S. BEDI, J.

The appellant has challenged the orders passed by the Executing Court and the Appellate Court dated December 9, 2014 and March 9, 2015 respectively, dismissing the objections filed by the appellant resisting the execution of decree for specific performance passed in favour of Beer Sen respondent No.1 and against judgment debtor Sat Pal, respondent No.2. The appellant is a third party objector. The appellant-objector had claimed that he is in actual physical possession of the suit property and that he had also filed a suit against the decree holder and the judgment debtor challenging the decree in a civil suit claiming that he was owner of the property in dispute vide sale deed dated June 13, 2007. The decree holder had filed an application under Order 1 Rule 10 CPC in

that suit which was dismissed. The decree holder had knowledge about all the proceedings pending between the objector and vendor. Claiming himself to be bonafide purchaser for valuable consideration of Rs.32,21,250/- on the basis of a Court order dated March 29, 2007 and he himself being a decree holder of specific performance against Sat Pal, he cannot be dispossessed.

The claim of the objector/ appellant was opposed by plaintiff Beer Sen on the ground that the decree obtained by him as well as the sale deed in his favour are result of collusion suffering from the vice of fraud. He had obtained the said decree during the pendency of the suit. There was an order passed by the Court in favour of respondent No.1 against defendant respondent No.2 to alienate the property but despite the said suit, it was sold to the objector who was close relation of respondent No.2 as such it will have no effect on his rights. The property having been sold in contravention to the restraint order dated May 16, 2006 granting injunction against alienation, the sale deed in favour of objector was claimed to be illegal. It was claimed that the judgment debtor and the appellant had connived with each other and the objector/ appellant managed to get the suit decreed and got the Court fee refunded.

Both the Courts below have considered the fact that the rights of the appellant will be governed by the principle of lis pendence, he having purchased the property by alleged sale deed dated June 13, 2007, during the pendency of the case filed by decree holder- respondent No.1.

I have heard learned counsel for the appellant and gone through the orders passed by the Courts below. A perusal of the orders passed by the Courts below indicate that the objection petition of the appellant has been dismissed on the ground that Executing Court cannot go beyond decree and that the appellant has got no locus standi to file the objection petition. He being closely related to the judgment debtor and having failed to get himself impleaded, will be bound by the principle of lis pendence. He cannot claim rights against the decree holder and that his objections were not maintainable.

It is an admitted fact that the appellant had filed a suit against respondent No.2 for specific performance of the agreement of sale dated July 15, 2005. The said suit was decreed vide judgment and decree dated March 29, 2007. A perusal of the judgment passed in said case indicates that defendant Sat Pal- respondent No.2 did not contest the same and facilitated the passing of the decree for possession on two months time having been granted to the appellant to execute the sale deed. Respondent No.1 had filed a suit for specific performance against the judgment debtor on the basis of agreement of sale dated September 27, 2005 which was decreed on March 22, 2013. Copy of the judgment has been appended with this petition as annexure P-2. The said suit was contested by respondent No.2. The appellant claims a preferential right of ownership and possession being a purchaser prior to the date of decree passed in favour of respondent No.1 against respondent No.2. The conduct of appellant as reflected by the steps

taken by him to defeat the decree which was likely to be passed in favour of respondent No.1, is apparent, as the entire circumstances were camouflaged in such a manner that the appellant is able to get the title during the pendency of the litigation between respondents No.1 and 2. With an objective to such designs the legislature in its wisdom has framed Order 21 Rule 102 CPC laying down that Rules 98 and 100 of Order 21 CPC shall not apply to the resistance or obstruction in execution of a decree for possession of the immoveable property by a person, to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed. The transfer in the present case to the appellant is a transfer which is bad by operation of law. As per explanation appended to Rule 102 CPC, said transfer is also included. The provision under Order 21 Rule 102 CPC is based on justice, equity and good conscious. A transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law. Rule 102 Order 21 CPC recognize the doctrine of lis pendence recognized by Section 52 of the Transfer of Property Act.

Since the appellant has not been able to even prima facie discharge the onus that he is a bonafide purchaser, he is held to have no right to obstruct the execution of the decree on the basis of the collusive decree obtained during the pendency of the suit.

In view of the above circumstances, it was not required of the trial Court to frame issues and to delay the proceedings to determine the grounds of objections.

Dismissed.

April 29, 2015
sanjay

(M.M.S.BEDI)
JUDGE