

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ESA 7 of 2015

Date of Decision: May 29, 2015

Ram Singh and others

.....Petitioners

Vs.

Gurdeep Singh and others

.....Respondents

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

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Present:- Mr. M.S. Viridi, Advocate
for the petitioners.

Mr. R.K. Gupta, Advocate
for respondent No.1.

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M.M.S. BEDI, J.

Appellants are third party objectors who claim that they have bonafide purchased the property from Balram Sharma vide a registered sale deed but so far as Balram is concerned, he had purchased this property from Jagdish Chand against whom a decree for possession had been obtained by plaintiff- respondent No.1 Gurdeep Singh, decree holder.

To what extent, the appellants could resist the execution of a decree for possession obtained by Gurdeep Singh- respondent No.1- decree holder is to be determined in the present Execution Second Appeal.

Brief facts which are relevant for appreciating the controversy are that Jagdish Chand- respondent No.2, owner of the suit land executed an agreement of sale dated October 24, 1994 in favour of Gurdeep Singh- respondent No.1. The last date for execution of the sale deed was agreed to as June 15, 1995. Jagdish Chand- respondent No.2 having failed to execute the sale deed in favour of Gurdeep Singh- respondent No.1, he filed a suit for specific performance on the basis of the agreement of sale dated October 24, 1994 against Jagdish Chand in the Court of Civil Judge, Rajpura. Said suit was dismissed in default on September 15, 1998 but was restored on June 7, 2004 after a period of six years. During this intervening period, Jagdish Chand- respondent No.2 had sold the suit land to Balram Sharma,- respondent No.3 vide two different sale deeds dated January 9, 2001 and January 10, 2001. In view of third party interest having been created during the pendency of the case, Balram Sharma was made a party in the suit. During the pendency of the suit for specific performance, Balram Sharma,- respondent No.3 transferred the suit land to the appellants- objector Ram Singh and others through a sale deed dated June 26, 2006. Balram Sharma was impleaded as a party in the suit for specific performance filed by Gurdeep Singh- respondent No.1. A decree for specific performance of agreement of sale was passed in favour of Gurdeep Singh vide judgment and

decree dated November 15, 2006. No appeal was preferred against the said judgment by Jagdish Chand, however, appeal was filed by Balram Sharma only which was dismissed by Additional District Judge, Patiala vide judgment dated March 20, 2010. No second appeal was filed by Balram Sharma against the judgment dated March 20, 2010. There being no obstacle for the decree holder to seek execution of the judgment and decree passed by Additional Civil Judge (Senior Division), Rajpura, warrants of possession of the suit land were issued for obtaining possession of the suit land. When notice was received from Halqa Patwari for delivery of possession of suit land by Gurdeep Singh, decree holder- respondent No.1, the appellants – objectors intervened as third party objectors to resist the delivery of possession to the decree holder. The objections by the appellant were dismissed on July 23, 2014. The order dated July 23, 2014 was challenged in an appeal by the objectors- appellants before District Judge, Patiala. The learned Additional District Judge, Patiala vide judgment dated December 10, 2014 dismissed the appeal.

The plea that the petitioners are bonafide purchasers of the property for valuable consideration was raised before the Executing Court by the objectors as well as before the Appellate Court. The main objection of the appellants is that at the time of purchase of land, measuring 11 Bighas 4 Biswas 5 Biswas detailed as 11 Bighas 3 ½ Biswas land being half share out of land measuring 22 Bighas 7 Biswas comprised in Khasra No. 848 (4-0), 849 (3-18), 850 (2-10), 851 (3-10), 852 (2-14) and land measuring 15

Biswasis being 15/120 share out of land measuring 6 Biswas of land comprised in Khasra No. 910 (0-2), 902 (0-2), 903 (0-2) situated within the revenue estate of Village Buddanpur, Sub Tehsil Banur, Tehsil and District S.A.S. Nagar, Mohali, had been duly inspected by the objectors from the revenue record. Their being no entry regarding the pendency of any suit and no entry regarding stay in the year 2001 and 2002, the sale in favour of appellants by Balram Sharma is a bonafide transaction. It was also contended by the appellants that the suit of Gurdeep Singh against Jagdish Chand and Balram Sharma was a collusive suit with an objective to cause loss to the appellants. It was claimed by the appellants that a false agreement of sale had been created for obtaining judgment and decree dated November 15, 2006 in connivance with the other respondents.

The lower Appellate Court considered the said contentions and observed as follows:-

“As the things stand out, the Id. Counsel for the objectors contended that judgment and decree dated 15.11.2006 was obtained by decree holder and JD in connivance with each other just to cause loss to the objectors. He further contended that JD No.2 had sold the suit land to the objectors vide sale deed dated 27.6.06 bearing vasika No. 4082 and mutation has already been sanctioned in their favour and now objectors are owners in possession over the suit land for a valuable sale

consideration. As discussed above the objectors are claiming that they purchased the land from JD and are bonafide purchaser but the JD's from whom they purchase the land themselves are not the owners because through judgment and decree sheet dated 15.11.2006 JD/defendant was not declared as bonafide purchaser by the Court, from whom the objectors purchased the suit land, so if the seller is not the owner then automatically purchaser is also not the owner. So accordingly, to my mind the objection in question is devoid of any merits and deserves to be dismissed."

Challenging the above said finding of the lower Appellate Court, counsel for the appellants has contended that the decree in favour of Gurdeep Singh against Jagdish Chand and Balram Sharma is a collusive decree as such the rule of lis pendens shall not apply. In support of his contention, he placed reliance on the judgment of **Bhagwan Bal Vs. Chiranji Lal and another**, 2009 (5) RCR (Civil) 787.

The next contention of learned counsel for the appellants is that the Courts below have dismissed the objections of the appellants without framing issues contending that the Courts below should have allowed the objection petition by treating the same as a suit. In this context he made a reference to provisions of Order 21 Rules 97 and 101 CPC and contended that by summarily disposing of the objections, an illegality had been

committed by the Courts below. The third party objections being akin to a suit have to be tried and adjudicated like an independent suit. The Executing Court could not have dismissed the objections without framing the issues and without allowing the parties to lead evidence. In this context, judgment in **Gram Panchayat, Hassanpur Vs. Jagdish Chand and others**, 2007 (4) RCR (Civil) 636 was relied upon.

On the other hand, learned counsel for the respondent No.1 decree holder submitted that the principle of lis pendens will be applicable in the present case in view of the provisions of Order 21 Rule 102 CPC which specifically provides that Rules 98 and 100 of Order 21 CPC would not apply to the resistance or obstruction in execution of a decree for possession of immovable property by a person to whom the judgment debtor has transferred the property after institution of the suit. He claimed that this is an exception to Section 52 of the Transfer of Property Act. Counsel for the respondent placed strong reliance on **Yogeshwar Education Trust Vs. Gurmeet Kaur and others**, 2009 (2) CCC 345 in support of his contention that principle of lis pendens would apply in respect of transfers/ alienations which have been effected after the lis had commenced. It was submitted that the plea of bonafide purchaser is not available to a transferee covered by the principle of lis pendens. He also made a reference to the judgment in **Jaswant Singh Vs. Ralla Singh and others**, 2005 (3) RCR (Civil) 109 in support of his contention that the objections of subsequent vendor like appellants during litigation are not to be adjudicated like a civil suit but have

to be summarily disposed of. Reliance was also placed on **Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another**, AIR 1998 SC 1754 wherein it was observed that there is no general rule of law that in all objections raised by the objector or the judgment debtor adjudication like a suit is mandatory, as Order 21 Rule 102 CPC provides that a transferee pendente lite of the judgment debtor has not been considered to be entitled to a detailed adjudication.

I have carefully considered the rival contentions of learned counsel for the appellants as well as counsel for respondent No.1. The short question which is required to be determined in the present case is whether the objections raised by the third-party objectors, the appellants deserved to be adjudicated like a civil suit or the same could have been disposed of summarily on the basis of the material which was available on the record. Whether the said material, in the nature of its evidentiary value was sufficient enough to enable the Court to form an opinion that the objectors were in collusion with the judgment debtor Jagdish Chand and Balram Sharma. Reiterating the facts of the present case, Gurdeep Singh respondent No. 1 decree holder had launched the proceedings for seeking possession by filing a suit for specific performance on the basis of an agreement of sale dated October 22, 1994 against Jagdish Chand. No doubt, the said suit remained pending for a period of 6 long years and ultimately culminated into a decree for possession by way of specific performance by judgment and decree dated November 15, 2006. Another interesting part of the litigation

is that third-party interest of Balram Sharma was created in the present case by purchase of the property on January 9, 2001. Jagdish Chand and Balram Sharma are certainly, duty bound by the judgment and decree passed in favour of Gurdeep Singh but whether Ram Singh etc. appellants who had jumped into the fray by taking the risk of purchasing the property by a registered sale deed dated June 27, 2006 would be protected as bona fide purchasers, is required to be determined. The appellants- objectors claim that the decree obtained by Gurdeep Singh is collusive against Jagdish Chand and Balram Sharma whereas the decree holder Gurdeep Singh has taken up the stand that the judgment debtors, with an oblique motives to defeat the decree which was likely to be passed, had sold the property to the appellants.

I have carefully considered the contention of learned counsel for the appellants whether the circumstances of the present case warrant a specific issue to be framed i.e. whether the decree passed in favour of Gurdeep Singh, decree holder for possession by specific performance of agreement dated October 22, 1994 is a collusive decree, and that whether the appellants are bonafide purchasers, immune to the provisions of Order 21 Rule 102 CPC.

The appellants Ram Singh and others admittedly had acquired right in the property during the pendency of the suit on June 27, 2006, a few months' prior to the decree obtained by Gurdeep Singh, decree holder. Balram Sharma was already a party being a subsequent purchaser having

acquired right by way of sale deed on January 9, 2001. Respondent Balram Sharma, a party to the suit was aware of the litigation of his vendor Jagdish Chand as he was a co-defendant with Jagdish Chand, judgment debtor and was bound by any decree or order passed qua the property in dispute in the litigation. The rights of appellants Ram Singh and others acquired from Balram Sharma are also subject to the litigation irrespective of the fact whether they were impleaded as a party in the litigation or not.

Even if the present appeal is allowed by setting aside the orders passed by the Courts below dismissing the objections of appellants and the Executing Court is asked to frame issues and re-determine the controversy by permitting the parties to lead evidence, no purpose would be served. No doubt the Executing Court is required to consider the objections filed by a 3rd party as a suit but it is always the discretion of the Court concerned to form an opinion whether the nature of the facts in issue require production of evidence by the parties in support of their respective claims or whether it is feasible for the Court to adjudicate upon the objections on the basis of the documents which are per se admissible as per the provisions of law.

In the present case, the appellants Ram Singh and others have come forward to defeat the decree passed in favour of Gurdeep Singh, decree holder- respondent No.1 on the ground that they are bonafide purchasers and would not be governed by the principle of lis pendens. A similar question had arisen in **Smt. Saravjeet Kaur Vs. Rang Lal**, 1998 (4) RCR (Civil) 674. A Single Bench of this Court, relying upon **Balwinderjit**

Kaur Vs. Financial Commissioner (Appeals), Punjab, 1970 RCR (Rent)

1105 arrived at a conclusion that vendees purchasing the property from the vendor during the pendency of the civil suit against the vendor for specific performance of the agreement of sale, would be bound by the decree against the vendor and the plea that they were bona fide purchaser without notice, would be of no consequence. The operative part of the judgment reads as follows:-

“7. The only question that remains to be decided in this appeal is whether the appellant can be said to be bona fide purchaser without notice of the proceedings. Section 52 of the Transfer of Property Act is very clear in terms. According to the said section, the property which is the subject matter of the suit cannot be transferred so as to affect the rights of any other party to the suit which he may have under the decree or order made therein. Section 52 of the Transfer of Property Act does not envisage any notice of the proceedings to the purchaser. The pendency of the proceedings are clearly within the knowledge of the defendant to the suit who sold the property. It is the duty of the first defendant to inform the intending purchaser of the pendency of the proceedings in the Court and if any wrong or fraudulent representation has been made by the defendant to the

purchaser it gives right or cause of action to the purchaser to claim damages against the defendant but the purchaser will always be subject to the result of the suit. Therefore, in my view, the plea that the appellant has no notice of the proceedings, cannot be accepted. It is useful to refer to the decision of this Court in *Balwinderjit Kaur V. Financial Commissioner (Appeals), Punjab*, 1970 RCR (Rent) 1105: 1987 PB & HR 189 wherein it has been held that the vendees purchasing the property from the vendor during pendency of the civil suit against the vendor for specific performance of the agreement to sell would be bound by the decree against the vendor and the plea that they were bona fide purchaser without notice, would be of no consequence.”

I have carefully appreciated the contention of learned counsel for the appellants regarding the need for framing of issues in the present case. As mentioned hereinabove, the probable issues which could have been framed in the present case have been mentioned hereinabove. In order to appreciate that contention, I am of the considered opinion that when an Executing Court dismisses objection petitions in a summary manner, however, taking into consideration all the relevant questions of law and fact, without framing issues giving an opportunity to the parties to produce evidence, which is per se admissible, such an adjudication cannot be said to

be improper or a nullity. No doubt, it is true that adjudication of objections in such matters is required to be conducted in terms of Order 21 Rule 98 CPC and the inquiry conducted under Order 21 Rule 101 CPC is an extensive one and is a substitute for a suit and that all questions relating to right, title and interest in the property arising between the parties to a proceeding have to be determined by the Executing Court. No doubt, in **Charanjit Singh and another Vs. Manmohan Singh and another**, 1989 (1) PLR 494, it has been held that where dispute requires the recording of evidence, issues should be framed and parties be allowed to lead evidence but a minute analysis of the facts of the present case, to my mind, do not warrant framing of issues and giving of an opportunity to the parties to lead evidence because the facts are absolutely clear and the bonafide or the intentions of the parties can be finally determined from the circumstances already on the record. It is not out of place to observe here that in **Sunil Auto Service Vs. Parikshant Suri and others**, 2011 (3) Civil CC 521, following **Rocky Tyres and another Vs. Ajit Jain and another**, AIR 1998 P&H 202, it was observed that need of framing issues would depend upon the facts and circumstances of each case and that it is not incumbent upon the Executing Court that it must put to trial every objection filed in execution proceedings. The Courts especially the Executing Courts are presumed to be possessed with sufficient wisdom on the basis of the experience of the judicial officer to prima facie appreciate whether the objections filed by the objector are frivolous, vexatious or with an objective

to delay the execution proceedings. Though such an observation, if reflected in the order, would facilitate the Appellate Courts to find out as to what circumstances weighed with the Executing Court to adjudicate the objections without framing issues and determining the objections summarily. Where the Executing Court considering the objections opts to decide the objections on the basis of the material available, without framing the issues, it can be presumed that the circumstances and the dispute did not require the recording of evidence. In **Som Parkash versus Santosh Rani** 1996 (2) RCR (Rent) 270, it was held that adjudication of objections does not mean that framing of issues is always necessary for the Executing Court and the term “adjudication” as used in rules does not start and end with the framing of issues but it requires appreciation of the case of the objector and documents in support of such objections. Framing of issues is thus not always necessary and the act of a Court in appreciation of pleadings of the objectors and its documents by judicious application of mind after fair opportunity of hearing would mean “adjudication”. Decree holder Gurdeep Singh on the basis of an agreement of sale dated October 27, 1994 had been pursuing his right to enforce the agreement of sale for a sufficient long period and was ultimately successful in getting a decree on November 15, 2006. The appellant- objectors have stepped into the shoes of Balram Sharma who himself was also a transferee during the pendency of the suit for specific performance. There is presumption that Balram Sharma having been impleaded as a party to the suit would be bound by the decree. The

appellants cannot acquire rights better than the rights which Balram Sharma possessed, who was also a purchaser of the property during pendency of the case.

In view of the above discussion, this Court is of the considered opinion that the appellants cannot be said to be an exception to the principle of rules of lis pendens under Section 52 of the Transfer of Property Act. The decree obtained by Gurdeep Singh is not on the face of it a collusive decree but is a hotly contested case for which he had to fight from the date of agreement in 1994 till the date of decree i.e. November 15, 2006. Factor of delay in adjudication cannot give an additional advantage to the appellants to defeat the rights of the decree holder. The circumstances of the present case do not warrant the framing of issues and determination of the rights of the parties. The provisions of Section 52 of the Transfer of Property Act may be re-appreciated which read as follows:-

“52. Transfer of property pending suit relating thereto.—During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable 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.”

According to the above said provisions, the exception provided in Section 52 of the Transfer of Property Act is that the rule of lis pendens shall not apply where the suit or proceeding is collusive, meaning thereby, the section shall not apply if it is proved that the person resisting the possession on the ground that decree which is sought to be executed has been obtained by decree holder, in a collusive manner. Since the decree in favour of Gurdeep Singh is not a collusive decree, in view of the said fact, neither issues were required to be framed nor the appellants will be protected and would be governed by the provisions of Order 21 Rule 102 CPC which read as follows:-

“Order 21 Rule 102 CPC:- Rules not applicable to transferee pendente lite-- Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable 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 or to the dispossession of any such person.

Explanation: In this rule, "transfer" includes a transfer by operation of law.”

In view of the above discussion, I do not find any ground to interfere in the impugned orders.

The appeal is dismissed.

May 29, 2015
sanjay

(M.M.S.BEDI)
JUDGE