

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3897 of 2011 (O&M)

Date of Decision.29.10.2015

Sadhu Ram (since deceased) through LRs

.....Appellant

Versus

Kashmir and others

.....Respondents

Present: Mr. Manjeet Singh, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 235 days in filing the appeal is condoned.
2. The appeal is at the instance of the plaintiff who claimed title to the property by virtue of purchase from defendant Nos.6 to 10 through a document dated 2.5.1990. The principal contest was entered by defendant Nos.1 to 5 who were pleading for the property as having been got under a decree in a suit instituted in Civil Suit No.308 of 1990 instituted on 26.4.1990. The suit had been instituted by defendant Nos.1 to 5 against defendant Nos.6 to 10 and decree had been passed on admission by defendants on 26.7.1990. The trial Court decreed the suit but in appeal filed by the defendants, the judgment of the trial Court was set aside. The Court observed, inter alia, that the plaintiff had not even filed the original document of purchase. The Court also found that the defendants had claimed the property under a decree through a suit instituted prior to the purchase by the plaintiff. The plaintiff who

suffered a reversal of the judgment to the Appellate Court is the appellant before this Court.

3. After reserving the case for orders, I had reopened it to elicit from the appellant the nature of decree that had been passed in favour of defendant Nos.1 to 5 earlier and I had sought also for the reason as to why the original deed of purchase could not be filed in Court. Learned counsel had supplied the copy of the judgment and decree under Ex.P2 and P3 under which defendant Nos.1 to 5 were making a claim to the property and also read through the judgment of the trial Court that refers to the fact that the original purchase document had been shown in Court but the copy of the sale deed was relied on only after examining one of the witnesses to the sale deed. According to the counsel, there was no objection taken at the time of tendering the copy and the sale deed had been proved since the sale had been proved by one of the witnesses, the non filing of the original was not material.

4. I have seen through the decree obtained by defendant Nos.1 to 5 against defendant Nos.6 to 10. If any suit instituted by defendant Nos.1 to 5 against defendant Nos.6 to 10 resulted in the defendant Nos.1 to 5 securing a decree on admission by defendant Nos.6 to 10 then the only way by which the plaintiff will be able to succeed is to show that the decree obtained by defendant Nos.1 to 5 was in any way vitiated. This is so in view of the fact that the suit by defendant Nos.1 to 5 had been earlier in point of time to the purchase by the plaintiff from defendant Nos.6 to 10. The suit had been instituted on 26.4.1990 and the plaintiff's purchase from defendant Nos.6 to 10 was

subsequent in point of time namely on 2.5.1990. If the plaintiff's purchase was, therefore, from defendant Nos.6 to 10 after the institution of suit against them, then the purchase will be hit by lis pendens and it will be no answer in a case where the title is sought on the basis of purchase that he had been bona fide in purchase and he had no knowledge of the institution of the suit earlier. The doctrine of lis pendens requires no specific knowledge about the pendency of the suit and it operates on a principle of public policy that a person who purchases the property during the pendency of any suit, purchases the property only subject to the result that the particular decree secures to the party. If the plaintiff has purchased the property from defendant Nos.6 to 10 on 2.5.1990 when they were already facing a litigation, the only way that the plaintiff can secure a declaration shall be by proof that the decree is vitiated in some way. There must have been a declaration to the effect, for the plaintiff had to explain as to how defendant Nos.6 to 10 could have sold the property when the very same subject matter had been subject of litigation. There had been no such attempt made by the plaintiff.

5. Even the explanation that the document had been permitted to be exhibited without any objection as justification for non production of the original would seem to be lame, for unless the document was admitted by the defendant which can be one of the justifications for reception of secondary evidence under Section 65 of the Indian Evidence Act, a party who produces a secondary evidence is bound to give any one of the circumstances mentioned under Section 65 of the Indian Evidence Act before secondary evidence could be relied on. Here is a case where

the plaintiff was relying on document of purchase which was denied by the defendants and the plaintiff could not have brought the document to trial and not filed the same. I am stating this for the sake of completion narration of facts and approach made by the lower Appellate Court. The parties are only guided by advice of counsel and it should have been appropriate that the original document itself had been filed in Court and exhibited as evidence. Assuming that the photocopy was wrongly filed instead of the original when it was available, I will still hold that the plaintiff cannot better the claim regarding title without assailing the decree which was obtained by defendant Nos.1 to 5 against defendant Nos.6 to 10 in a suit instituted by him in earlier point of time to the plaintiff's purchase. I will find no cause for interference to the judgments of the Courts below dismissing the plaintiff's suit. The plaintiff will have a remedy only against defendant Nos.6 to 10 for any fraud or defect in the title that had resulted by their sale when there was already a suit in respect of very same subject matter and when they had allowed for a decree to be passed on admission by them although subsequent to the deed of sale in favour of the plaintiff and without supporting the title of the purchaser.

6. The second appeal is dismissed but the plaintiff may have a remedy against defendant Nos.6 to 10 in the manner referred to above.

(K. KANNAN)
JUDGE

October 29, 2015
Pankaj*