

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1541 of 2012 (O&M)

Date of Decision: September 08, 2015

Amandeep Singh & others

...Appellants

Versus

Ram Lal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Amarjit Markan, Advocate,
for the appellants.

Mr.Nandan Jindal, Advocate,
for respondent No.1.

None for the remaining respondents.

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the impugned findings rendered by the trial Court and affirmed by the Lower Appellate Court in a suit for recovery on the basis of Pronote dated 3.5.2003 at the behest of appellant-defendant Nos.4 to 6, who are stated to have purchased the land measuring 8 Bighas 11 Biswas vide registered sale deed dated 27.1.2004 (Ex.P5).

Mr.Amarjit Markan, learned counsel appearing on behalf of appellant-defendant Nos.4 to 6 submits that in a suit for recovery based on

the pronote, the respondent-plaintiff did not have any right to seek setting-aside of the sale deed executed by Karnail Singh in favour of various persons, i.e., predecessors-in-interest of appellant-defendant Nos.4 to 6. He further submits that in view of such findings, decrees of both the Courts below are liable to be modified as there was no lis/privity between the plaintiff and the defendants as the pronote, admittedly, was executed by Karnail Singh in favour of Ram Lal plaintiff. He, thus, submits that the following substantial questions of law arise in the present appeal for determination by this Court:-

- 1) Whether in a suit for recovery of the amount on the basis of Pronote, a sale deed executed by the author of the Pronote can be set-aside?
- 2) Whether there was a lis/privity between the plaintiff and defendant Nos.4 to 6, who are *bonafide* purchasers of a land for valuable consideration from Satnam Singh, who is stated to have purchased the land from the erstwhile owner, i.e., Karnail Singh?
- 3) Whether the registered sale deed dated 24.01.2004 is hit by Section 53 of Transfer of Property Act, 1882 as the same is for consideration and without notice to the minor defendants/appellants?

Mr.Nandan Jindal, learned counsel appearing on behalf of the respondent-plaintiff submits that since the plaintiff had an apprehension that Karnail Singh had squandered away with the property which he owned, the relief qua setting-aside of the sale deed in a suit for recovery, based on the

execution of Pronote, had been sought. There is no illegality and perversity in the findings rendered by both the Courts below, much less, no substantial question of law arises for determination by this Court. In support of his contentions, he has also relied upon the provisions of Section 53 of the Transfer of Property Act, 1882 (for short "1882 Act") to contend that creditor is well within his right to challenge the fraudulent act/transfer done by the defendant to scuttle the right of the plaintiff to recover the amount due.

I have heard the learned counsel for the parties and appraised the paper book.

The respondent-plaintiff had sought the recovery of amount of ₹4,75,000/-, i.e., ₹4,00,000/- as principal and ₹75,000/- as interest on the basis of Pronote dated 3.5.2003 executed by Karnail Singh. Simultaneously, he has also sought relief of setting-aside the sale deeds dated 16.6.2003, 7.7.2003 and 27.1.2004 in order to secure the amount sought to be recovered. In my view, such relief could not have been sought, much less, granted. Even otherwise, the respondent-plaintiff could not have challenged sale deeds, in order to secure the amount as there are remedies available to seek execution of money decree. The provisions of Section 53 of 1882 Act would not be applicable to the facts and circumstances of the case as there was no privity of contract between the parties as Karnail Singh executed the pronote in favour of Ram Lal and the plaintiff is transferee from Karnail Singh.

In my view, the judgment of the trial Court is required to be modified for the reason that the decree could only be passed against Karnail

Singh for recovery of amount and the judgment and decree, vis-a-vis, setting-aside the sale deeds dated 16.6.2003, 7.7.2003 and 27.1.2004 is liable to be set-aside. Ordered accordingly.

The respondent-plaintiff would be within his rights to seek the recovery of the aforementioned amount from defendant No.1 in accordance with law. Thus, the substantial questions of law are answered in favour of appellant-defendant Nos.4 to 6 and against the respondent-plaintiff.

The appeal is accordingly allowed.

September 08, 2015
ramesh

(AMIT RAWAL)
JUDGE