

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

(1)

**Regular Second Appeal No.1448 of 1987 (O&M)
Date of Decision: May 23, 2016.**

Swaran Singh and others

.....APPELLANT(s).

VERSUS

Surjit Singh and others

.....RESPONDENT(s).

(2)

Civil Writ Petition No.12889 of 1998(O&M)

Bachan Singh and others

.....PETITIONER(s)

VERSUS

Financial Commissioner and others

.....RESPONDENT(s)

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kanwaljit Singh, Senior Advocate with
Ms. Jaswinder Kaur, Advocate
for the appellants in RSA-1448-1987.

Mr. C.M. Munjal, Advocate
for the petitioners in CWP-12889-1998.

Mr. Amit Jain, Advocate
for LR's of respondent No.1 in RSA-1448-1987
and for LR's of respondent No.3 in CWP-12889-1998.

Mr. L.C. Aggarwal, A.A.G. Punjab
for respondents No.1 & 2 in CWP 12889-1998.

SURINDER GUPTA, J.

RSA-1448-1987

This is second appeal against the judgment and decree passed
by the then Sub Judge 1st Class, Kharar whereby the suit filed by the
plaintiffs seeking declaration to the effect that decree passed by District

Judge, Ropar on 25.01.1982 in appeal No.108 dated 06.04.1981 titled as

Surjit Singh Vs. Piara Singh and others, is illegal null and void qua the rights of the plaintiff in the suit land, was dismissed. The judgment of learned Sub Judge was affirmed in appeal by first Appellate Court of District Judge, Ropar.

2. Defendants Surjit Singh, Piara Singh and Bawa Singh are sons of Thakar Singh son of Hari Singh, residents of village Peer Sohana, Tehsil Kharar. Thakar Singh was owner of the suit land. He executed a gift deed dated 27.06.1969 in favour of defendants No.2 and 3 namely Piara Singh and Bawa Singh. On the basis of gift deed, the suit land was recorded in the name of donees and the plaintiffs purchased the suit land from them vide different sale deed during the period from 12.03.1980 to 09.05.1980.

3. Defendant No.1 Surjit Singh filed a suit, seeking the relief of joint possession of his 1/3rd share in the suit land and challenged the gift deed. Defendants No.2 and 3 Piara Singh and Bawa Singh, brothers of Surjit Singh who were arrayed as defendants No.1 and 2 in the suit filed by Surjit Singh (bearing No.38/26.03.1980), did not appear to contest the claim of plaintiff and were proceeded ex parte. That suit filed by Surjit Singh was dismissed by Sub Judge 1st Class, Kharar vide judgment dated 27.11.1980. He filed first appeal against that judgment and decree passed by the lower Court in which also defendants Piara Singh and Bawa Singh did not appear to contest and the appeal was accepted by learned District Judge, Ropar vide judgment dated 25.01.1982.

4. The plaintiffs have alleged that the decree dated 25.01.1982 does not bind them on the grounds as follows:-

“(i) That the plaintiffs have purchased the suit property from defendants No.2 and 3 even prior to the filing of the suit

against defendants No.2 and 3.

- (ii) That defendants had no interest in the property at the time of filing the suit and the plaintiffs were necessary parties to the suit and the decree is an ex parte decree.
- (iii) That the plaintiffs were never impleaded as parties to the suit, therefore, the decree is not binding against the plaintiffs.
- (iv) That the applicants(sic plaintiffs) are in possession of the suit property even prior to the filing of the suit.
- (v) That the decree has been obtained by (the) defendant No.1 against defendant No.2 & 3 in collusion with each other and the plaintiffs were kept in dark about the litigation.
- (vi) That (the) defendant No.1 was in the knowledge of the sale of the land by defendant No.2 & 3 to the plaintiffs and the plaintiffs were not arrayed as party to the suit knowingly simply to harass the interest of plaintiffs.”

5. In the execution of the decree dated 25.01.1982, defendant No.1 took warrants of possession and were out to dispossess the plaintiffs compelling the filing of the instant suit.

6. In this suit also, defendants No.2 and 3 did not appear to contest and were proceeded ex parte.

7. Defendant No.1 Surjit Singh contested the claim of plaintiffs on the ground that the land was purchased by plaintiffs from defendants No.2 and 3 after the alienation of the suit land had been stayed by the Court. He (defendant No.1) had already taken possession of his share of the suit land. Defendants No.2 and 3 have sold the land of the share of defendant No.1 and the sale made by them is not binding on his rights. The gift deed executed by father of defendants No.1 to 3 was set aside and defendant No.1

was declared owner of 1/3rd share in the suit land. All other averments of

the plaintiffs were denied and controverted.

8. Plaintiffs reasserted their case in the replication. Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether minors plaintiffs No.3 & 4, are legally represented by next friend who has no interest adverse to them as alleged? OPP
- (2) Whether plaintiffs are in possession of the suit property, as alleged in objection No.3 of the replication? OPP
- (3) Whether plaintiffs were necessary party to the civil suit No.38 dated 26.03.1980 titled as Surjit Singh Vs. Piara Singh and Bawa Singh and so also in the appeal, if so its effect? OPD
- (4) Whether the judgment and decree dated 25.1.82 is collusive and does not effect the rights of the plaintiffs and is not binding on the plaintiffs? OPD
- (5) Whether the suit is not maintainable in the present form as alleged in preliminary objections No.1 & 3? OPD
- (6) Whether the suit has been properly valued for the purposes of court fee and jurisdiction? OPD
- (7) Relief.

9. Learned Sub Judge recorded finding on issue No.2 that the possession of appellants over the suit land is as cosharers to the extent of their 2/3rd share. While answering issue No.3, it was held that plaintiffs were not necessary parties to civil suit No.38 dated 26.03.1980 and the decree dated 25.01.1982 passed by the first Appellate Court in that suit, was not a collusive decree.

10. In appeal, learned District Judge, Ropar affirmed the findings of learned Sub Judge and dismissed the appeal.

11. I have heard learned counsel for the parties and have perused the paper book and record of the Courts below with their assistance.

12. Before proceeding further, it will be relevant to recapitulate some of the facts which are not disputed:-

- (i) The suit land was owned by Thakar Singh, father of Surjit Singh, Piara Singh and Bawa Singh.
- (ii) Thakar Singh executed a gift deed pertaining to the suit land in favour of Piara Singh and Bawa Singh.
- (iii) Mutation on the basis of the gift deed was sanctioned in favour of Piara Singh and Bawa Singh and they were recorded owner of the suit land in the revenue record.
- (iv) Surjit Singh filed civil suit No.38 dated 26.03.1980, challenging the gift deed executed by his father Thakar Singh in favour of Piara Singh and Bawa Singh.
- (v) Before that civil suit, Piara Singh and Bawa Singh had sold 20 kanals land each out of the suit land in favour of Bachan Singh son of Surjan Singh (appellant) vide two separate sale deeds both dated 12.03.1980.
- (vi) After filing of the suit, Piara Singh and Bawa Singh sold remaining land in favour of different appellants as per the table given below:-

Sr. No.	Date of sale deed	Executed by	In favour of	Land sold
1	09.04.1980	Bawa Singh	Kuldeep Kaur w/o Randhir Singh	1/2 share in land measuring 42 kanals
2	09.04.1980	Piara Singh	Bachan Singh son of Surjan Singh	1/2 share in land measuring 42 kanals
3	09.05.1980	Bawa Singh	Bachan Singh son of Surjan Singh	1/2 share of land measuring 39 kanals 9 marlas
4	09.05.1980	Piara Singh	Harminder Singh s/o Surjan Singh	1/2 share of land measuring 39 kanals 9 marlas
5	10.06.1980	Piara Singh	Harpal Singh s/o Bachan Singh	1/2 share of land measuring 38 kanals 5 marlas.
6	10.06.1980	Bawa Singh	Bachan Singh s/o Surjan Singh	Land measuring 19 kanals 2 marlas.

- (vii) Kuldeep Kaur wife of Randhir Singh, who purchased the land measuring 21 kanals from Bawa Singh vide sale deed dated 09.04.1980, is not a party to this suit.

- (viii) Civil suit No.38 dated 26.03.1980 filed by Surjit Singh was dismissed by Sub Judge 1st Class, Kharar vide judgment dated 27.11.1980 and the appeal filed by Surjit Singh was accepted by learned District Judge, Ropar vide judgment dated 25.01.1982. Against the judgment of learned District Judge, Ropar dated 25.01.1982, neither of the party to the suit or appellants, who purchased the land during the pendency of the civil suit, filed any appeal and the judgment of District Judge had attained finality.
- (ix) Piara Singh and Bawa Singh filed application for setting aside ex parte decree passed by District Judge, Ropar but their application was dismissed vide order dated 19.09.1983 and against that order, no further appeal or revision was filed.
- (x) Appellants filed objections during the execution proceedings of the decree passed by District Judge, Ropar which were also dismissed by learned Sub Judge, Kharar vide order dated 08.04.1982 and symbolic possession of the suit land was delivered to Surjit Singh.

13. Learned counsel for the appellants has argued that the judgment and decree passed by learned Sub Judge in civil suit No.38 dated 26.03.1980 and the District Judge, Ropar are not binding on the appellants as they were not party to that judgment and decree. Being purchaser of part of the land from Piara Singh and Bawa Singh even prior to filing of that civil suit, the appellants were necessary party but Surjit Singh in collusion with his brothers Piara Singh and Bawa Singh did not implead appellants as party in that suit. This fact has two implications; firstly, that the judgment and decree passed in the absence of appellants, is not binding on them and secondly, this shows the collusion of Surjit Singh with his brothers Piara Singh and Bawa Singh, who neither contested the civil suit nor the appeal

and the application filed by them seeking setting aside the ex parte decree of first Appellate Court, was just an eye wash and was not a serious attempt. They had also not gone in appeal or revision against that order, whereby their application seeking setting aside of the ex parte decree passed by the first Appellate Court, was dismissed. Learned counsel for the appellant has relied on the observations of Hon'ble Apex Court in case of ***Amit Kumar Shaw and Another Versus Farida Khatoon and Another 2005(11) SCC 403*** to impress upon his arguments that the appellants were necessary party in the earlier suit.

14. He has argued that the rule of lis pendens is not applicable where the proceedings are collusive. In this case, Piara Singh and Bawa Singh have sold part of the suit land prior to filing of the suit and the remaining land after filing of the civil suit by their brother Surjit Singh without knowledge and notice to the appellants and the decree in favour of respondent No.1 was collusive, as such, not binding on the rights of the appellants or hit the sale transaction in their favour by the principle of lis pendens. They are bona fide purchasers of the suit land for consideration and had no knowledge of the civil suit filed by Surjit Singh against his brothers at the time of purchasing the land. The appellants filed objections during the execution proceedings which were dismissed by the Court with the observation that those are not maintainable, while on the other hand, this suit has also been dismissed with the observation that it is not maintainable. This shows that the appellants have been rendered remediless against the mischief and misdemeanor of Surjit Singh and his brothers. The gift deed was executed by Thakar Singh in the year 1969. The same was challenged by Surjit Singh in the year 1980 i.e. after a period of 11 years. During this

period, mutation was sanctioned in favour of Piara Singh and Bawa Singh and they were recorded owners of the suit land. They were in possession of the suit land and delivered the same to the appellants, who are continuing in possession till date. The Courts below have observed that six sale deeds (tabulated in para 12(vi) above) were executed during the pendency of the suit filed by Surjit Singh in violation of the injunction order. It is settled principle of law that violation of injunction order will not invalidate the sale deeds or render it nullity. Reference to this effect has been made to the case of *Dalbara Singh Vs. Chhaja Singh 1993(1) PLR 125*. Relying on the observations in cases of *Ahmed Shah Khan Vs. Smt. Muneerunnisa Begum @ Sultana and others 2012 (2) ALT 654* and *State of Punjab Vs. Sanjogta and others 2001(2) PLR 610*, learned counsel for the appellants has argued that when there is title of third party involved regarding the possession over a property, the party in possession particularly when, it is having title over the suit property is not without any remedy and can file a separate suit as well as objections. Both the Courts below have committed grave error of law and misdirected themselves while dismissing the suit filed by the appellants-plaintiffs with the observation that it is not maintainable.

15. Learned counsel for respondent No.1 has argued that there are 8 sale deeds executed by Piara Singh and Bawa Singh, pertaining to the suit land. Two sale deeds were executed prior to filing of civil suit by Surjit Singh on 26.03.1980. Respondent No.1 does not challenge the legality and validity of said sale deeds as the same fall within the share of vendors. The remaining sale deeds were executed during the pendency of the suit filed by Surjit Singh after the grant of injunction order, as such, hit by the principle

of lis pendens. The vendees of those six sale deeds have stepped into the shoes of vendor, as such, have no separate remedy to file civil suit or objections. The suit filed by plaintiffs is not maintainable in the present form and is specifically barred under Order 21 Rule 101 CPC. The appellants-plaintiffs concealed about the dismissal of their objections by the executing Court and the order passed by the executing Court operates as res judicata as a decree and could be challenged in appeal. Reliance has been placed on observations in cases of *Shreenath Vs. Rajesh AIR 1998 Supreme Court 1827*; *Prasantha Banerji Vs. Pushpa Ashoke Chandani 2001(2) RCR (Civil) 622*; and *Jaswant Singh and Anr. Vs. Kuldip Raj and Ors., 2011(2) PLR 368*.

16. He has also referred to the observations of Hon'ble Apex Court in case *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another AIR 1998 Supreme Court 1754* and has argued that lis pendens purchaser has no right as the purchaser has to step into the shoes of vendor.

17. Appellants-plaintiffs have been challenging decree dated 25.01.1982 alleging that the same is the result of collusion between Surjit Singh on one side and Piara Singh and Bawa Singh on the other side. In the execution filed by Surjit Singh seeking possession of 1/3rd share as per the decree dated 25.01.1982, appellants-plaintiffs filed objections, which were dismissed by the executing Court vide order dated 08.09.1982, placed on file as Ex.DB. It is evident on perusal of the order Ex.DB that the appellant-plaintiff had nowhere alleged any fraud in the passing of the decree. The executing Court observed in para 5 of the order dated 08.09.1982 (Ex.DB) as follows:-

behind the decree and has to take it as it was. The perusal of the application nowhere indicates if the decree was obtained by the Decree Holder either by practising a fraud, or that the same is a nullity and that the only averment made by the applicants in the application is that as they were not parties to the main suit in which the decree holder obtained a decree, therefore, the same is not binding upon them, as they purchased the land in decree from JDs even prior to the filing of the suit. The decree is not against any of the applicants, and rather, the same is against Piara Singh and Bawa Singh sons of Thakar Singh.”

18. Before executing Court, appellants-plaintiffs were challenging the decree passed by first Appellate Court on the ground that they were not party to the decree. They had purchased part of the land even prior to the filing of suit vide two sale deeds dated 12.03.1980. Learned executing Court observed that it cannot go beyond the decree and the appellants-plaintiffs for the purchase of part of the suit land during the pendency of the suit, were bound by the decree.

19. Following substantial questions of law arises for consideration in this appeal:-

(i) Whether the judgment and decree dated 25.01.1982 and the civil suit filed by Surjit Singh in which this decree was passed, is a result of collusion between the parties to that suit?

(ii) Whether the suit filed by the plaintiffs is maintainable?

(iii) Whether the sale of suit land in favour of plaintiffs by Piara Singh and Bawa Singh was hit by the principle of lis pendens?

(iv) Whether the finding of the Courts below that Surjit Singh was in possession of the suit land being cosharer, are based on misreading of evidence on record?

20. As already discussed, Thakar Singh had executed a gift deed in

favour of his two sons namely Piara Singh and Bawa Singh and Thakar Singh never challenged the legality and validity of the gift deed during his life time. Appellants-plaintiffs purchased part of the land which came to Piara Singh and Bawa Singh by way of gift deed vide two sale deeds dated 12.03.1980. When Surjit Singh filed civil suit No.38 dated 26.03.1980, both Piara Singh and Bawa Singh did not appear to contest the claim of Surjit Singh and refused to accept the summons sent to them by registered posts. The suit was, however, dismissed as Surjit Singh failed to prove that the land in the hands of Thakar Singh, was joint Hindu family coparcenary property. In appeal, Piara Singh and Bawa Singh again refused to accept the summons and allowed the first appeal to be decided in their absence. The appeal was accepted. It was, at this stage, that Piara Singh and Bawa Singh moved an application on 04.08.1982 seeking setting aside of ex parte decree. The application was dismissed with the observations that the summons were sent to them in registered covers, which they refused to accept. Against the order dated 19.09.1983, dismissing their appeal, they did not avail any further remedy of filing appeal or revision.

21. Learned counsel for the respondent has argued that before the executing Court; firstly, the appellants-plaintiffs did not challenge the decree dated 25.01.1982 on the basis of fraud or collusion, as such, they are now barred from raising this plea. Secondly, the sale deed executed after the filing of civil suit by Surjit Singh are hit by the principle of lis pendens.

22. In case of *Amit Kumar Shaw and Another Versus Farida Khatoon and Another (supra)*, Hon'ble Apex Court while discussing scope and application of Section 52 of Transfer of Property Act, has observed in

para 15 as follows:-

“15. Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This Section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:

1. There must be a suit or proceeding pending in a Court of competent jurisdiction.
2. The suit or proceeding must not be collusive.
3. The litigation must be one in which right to immovable property is directly and specifically in question.
4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.”

23. The bare reading of Section 52 Transfer of Property Act and the observations in the above citation, clearly lay down that the principle of lis pendens is not attracted when the suit or proceedings are collusive. As is apparent from the order of executing Court discussed in para 17 above, the appellants have not levelled any allegation of fraud or collusion at the time of filing of the objections. As to whether an ex parte decree passed in this case is a result of collusion is a fact which has been discussed by the Courts below and answered in negative. Even, while going through the statement

of appellant-plaintiff Bachan Singh, who appeared as PW1, I find that he is not deposing of collusion of Piara Singh and Bawa Singh with Surjit Singh, rather in his examination-in-chief recorded on 24.01.1984, he alleged that Piara Singh and Bawa Singh were not served in the suit filed by Surjit Singh. It was in his further examination-in-chief, recorded on 04.12.1984 that Bachan Singh stated about collusion of Surjit Singh with his brothers in obtaining the ex parte decree. It is evident that Piara Singh and Bawa Singh moved an application seeking setting aside ex parte judgment and decree passed by the First Appellate Court which was dismissed and the appellants-plaintiffs at no stage, moved application to be impleaded as party after the purchase of the land, preferred appeal against the judgment dated 25.01.1982 passed by District Judge, Ropar.

24. The legal proposition which arise in this case is that a suit filed by Surjit Singh against his brothers Piara Singh and Bawa Singh was pending when the appellants purchased part of the suit land. In that litigation, decree was passed in favour of Surjit Singh. In such circumstances, as to whether purchaser pendente lite have right to obstruct or challenge the decree. The question was answered by Hon'ble Apex Court in somewhat similar circumstances in case of ***Usha Sinha Vs. Bina Ram and others 2008(3) RCR (Civil) 145***. In that case also, the defendants have sold their share in the suit property during pendency of the suit. Hon'ble Apex Court while relying on the observations on ***Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another (supra)***, had observed in paras 19 to 21 of the judgment as follows:-

“19. In ***Silverline Forum Pvt. Ltd. v. Rajiv Trust, (1998) 3 SCC 723***, this Court held that where the

resistance is caused or obstruction is offered by a transferee pendente lite, the scope of adjudication is confined to a question whether he was a transferee during the pendency of a suit in which the decree was passed. Once the finding is in the affirmative, the Executing Court must hold that he had no right to resist or obstruct and such person cannot seek protection from the Executing Court.

20. The Court stated; "It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under rule 97 or rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act."

(emphasis supplied)

[See also *Sarvinder Singh v. Dalip Singh*, (1996) 5 SCC 539]

21. We are in respectful agreement with the proposition of law laid down by this Court in *Silverline*

Forum. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated.”

25. In para 18 of the above judgment, Hon'ble Apex Court discussed the status of purchaser pendente lite and observed as follows:-

“18. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.”

26. In view of the facts of this case as already noted earlier, six sale deeds mentioned in para 12(vi) were during the pendency of the suit filed by Surjit Singh. The suit filed by Surjit Singh bearing No.38 dated 26.03.1980 was dismissed but his appeal was allowed by the first Appellate Court vide judgment dated 25.01.1982.

27. In view of the above facts and circumstances, I am of the considered opinion that doctrine of lis pendens would apply to the above six

transactions and the Courts below have committed no error of law while making observations to this effect.

28. The citations referred by learned counsel for the appellants are not helpful to the appellants. The law laid down in case of ***Amit Kumar Shaw and Another Versus Farida Khatoon and Another (supra)*** that principle of lis pendens is not applicable when the suit or proceedings are collusive, has no application to the facts and circumstances of this case as the appellants have failed to prove that litigation in which decree dated 25.01.1982 passed by the first Appellate Court was collusive. The observations by a Bench of this court in case of ***Dalbara Singh Vs. Chhaja Singh (supra)*** that violation of injunction order will not invalidate the sale deed or render it nullity, are not disputed. The sale deed in favour of appellants cannot be set aside on the mere ground that these were excluded when the interim injunction order in the suit filed by Surjit Singh was in operation. These sale deeds, however, are subject to final decree passed in the suit filed by Surjit Singh.

29. In case of ***Ahmed Shah Khan Vs. Smt. Muneerunnisa Begum @ Sultana and others (supra)***, the delivery of possession as per the decree of specific performance passed in favour of appellant was resisted by third party with the plea that they were already in possession of the suit property under an agreement of sale. The respondents were neither trespasser nor the persons in unlawful possession and the right of third party to resist the delivery of possession was upheld by Single Bench of Hon'ble Andhra Pradesh High Court.

30. In case of ***State of Punjab Vs. Sanjogta and others (supra)***, a Bench of this Court has observed that a third party has right to protect its

possession and file objection in the execution proceedings which the executing Court can entertain and decide. A third party has also right to file the civil suit. In this case, the appellants have stepped into the shoes of judgment-debtor, as such, do not fall within the category of third party. Hence, the observations in the above referred citation are not applicable to the facts of the present case.

31. Learned counsel for the appellants-plaintiffs has also referred to the observations in case of ***Smt. Badami (Deceased) by her LR Vs. Bhali 2013(1) RCR (Civil) 821***, wherein the Hon'ble Apex Court, while dealing with the concept of fraud, observed in para 19 to 21 as follows:-

“19. Presently, we shall refer as to how this Court has dealt with concept of fraud. In ***S. B. Noronah v. Prem Kumari Khanna 1979 (2) R.C.R. (Rent) 455***, while dealing with the concept of estoppel and fraud a two-Judge Bench has stated that it is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made by modern law. Even so, “a judgment obtained by fraud or collusion, even, it seems a judgment of the House of Lords, may be treated as a nullity”. (See ***Halsbury's Laws of England, Vol. 16 Fourth Edition para 1553***). The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.

20. In ***S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others, 1994 (1) R.R.R. 253***, this court commenced the verdict with the following words:-

““Fraud-avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the

settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.”

32. The principles of law discussed by Hon'ble Apex Court are not disputed by either party. The only question is whether in the facts and circumstances of this case, the appellants can derive any benefit of the above observations. They have purchased the land during pendency of the suit and it is not proved on file that there was any collusion between the plaintiff and defendants in that suit. Even in the execution proceedings, when the plaintiff raised objection, they did not allege any fraud or collusion in obtaining the decree. Even while appearing as PW1, plaintiff has stated that it was in the earlier suit filed by Surjit Singh, defendants namely Piara Singh and Bawa Singh were not served and were proceeded against ex parte. The plaintiffs have acquired the rights in the suit property during pendency of the suit and have stepped into the shoes of judgment-debtor. They could avail the right of appeal against the judgment dated

25.01.1982 being subsequent vendees or avail any other remedy available to

them under law. They could also succeed in this suit in case, they have been able to prove that judgment and decree dated 25.01.1982 was the result of collusion and fraud which they have utterly failed to prove.

33. In view of my above discussion, the substantial questions of law No.(i) to (iii) as framed in this case are answered against the appellants.

34. Before parting further, it will be relevant to look into this aspect that the appellants are in possession of the suit land. This fact has not been seriously disputed. While appearing as DW1, Surjit Singh has stated that he has never cultivated the suit land. His possession is only as a cosharer. The revenue record produced on file shows that the suit land was in exclusive possession of Piara Singh and Bawa Singh and later on their vendees. Surjit Singh was delivered only symbolic possession of the suit land in execution proceedings. As such, this finding of the Courts below that Surjit Singh was in actual possession at the spot being cosharer, is not based on evidence on record, as such, is liable to be reversed. The substantial question of law No.(iv) is answered in favour of the appellants.

35. Consequently, this appeal is partly accepted only to the extent that the defendant No.1 is restrained from dispossessing the appellants-plaintiffs from the suit land except in due course of law. The judgment and decree of the Courts below declining other relief to the appellants-plaintiffs is, however, affirmed.

CWP No.12889 of 1998

36. This is writ petition against the order of financial Commissioner, Appeals-1, Punjab, whereby the revision petition against the order of Commissioner (Appeals), Ferozepur and Patiala Division dated 09.02.1995 vide which he endorsed the order of Collector, Kharar dated

10.10.1998 and Assistant Collector Grade I dated 07.11.1986 in partition proceedings in respect of land measuring 159 kanals 14 marlas situated in village Peer Sohana, Tehsil Kharar, District Ropar, was dismissed.

37. As observed while deciding regular second appeal No.1448 of 1987 (above) that Surjit Singh has 1/3rd share in the suit land. He moved application for partition of his share and the partition proceedings have since attained finality. The challenge of petitioners to the judgment and decree dated 25.01.1982, whereby Surjit Singh was declared as owner of 1/3rd share has been annulled by the Civil Court and the regular second appeal filed by the petitioners has also been dismissed. As this matter has attained finality that Surjit Singh has 1/3rd share in the suit land, he is entitled to seek partition of the same as per order passed by the revenue authorities. The mode of partition has already been finalised and learned counsel for the petitioners have not addressed any arguments, challenging the mode of partition.

38. This petition has no merits.

39. Dismissed.

May 23, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE