

ESA No. 46 of 2012

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In the High Court of Punjab and Haryana at Chandigarh

ESA No. 46 of 2012

Date of Decision: 14.7.2016

Raj Rani

---Appellant

versus

Bimla Devi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.C.L.Sharma, Advocate
for the appellant**

**Mr.Arun Takhi, Advocate
for the respondent**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal lays challenge to order dated 1.8.2012 passed by the Additional District Judge, Fast Track Court, Hoshiarpur

whereby the appeal preferred by the appellant against order dated 4.4.2009 passed by the Additional Civil Judge (Senior Division), Hoshiarpur (hereinafter referred to as “the Executing Court”) has been dismissed.

Raj Rani appellant filed a suit for maintenance against Ram Kishan Dhir. Alongwith the suit, an application was filed to sue as an indigent person. The application was allowed and the suit was registered as such on 19.4.1996. The suit was decreed and she was allowed maintenance @ Rs. 600/- per month with effect from 26.3.1990. The decree holder filed an application for execution wherein the respondent filed an objection petition that was allowed by the Executing Court after framing of issues and permitting the parties to adduce evidence in support of their respective contentions. As has been noticed hereinbefore, the appeal preferred by the decree holder/appellant did not find favour with the Additional District Judge, Hoshiarpur.

Still feeling dissatisfied, the matter has been carried in appeal before this Court.

The respondent/objector challenged maintainability of the execution petition primarily on the plea that she had purchased 'deori' and room towards northern side of property in dispute vide sale deed dated

19.3.1990 and suit for recovery of maintenance has been filed on 19.4.1996 i.e. six years after purchase and the decree holder cannot take benefit of lis pendence.

On 28.4.2016, this Court culled out two questions for determination, read as follows:-

“(i)whether the sale deed dated 19.3.1990 registered on 9.4.1990 would be hit by the principle of lis pendence in the circumstances that Raj Rani filed an application to sue as an indigent person in the year 1990 i.e. 27.3.1990 but the suit was registered on 19.4.1996.

(ii)whether the date of sale deed executed by Sh. Ram Kishan Dhir would be taken as 19.3.1990 or 9.4.1990 in the circumstances of the present case.”

Firstly, the Court would take up question No. 2 for decision as if the said question is answered in favour of the respondent, the first question would lose its relevance and become redundant.

Counsel for the appellant would contend that as the sale deed in regard to part of the property in question was got registered by Sh. Ram Kishan Dhir on 9.4.1990 after institution of the suit alongwith an

application for permission to sue as an indigent person on 27.3.1990, the sale in favour of the respondent would be a sale for all intents and purposes, with effect from 9.4.1990 and not from the date of execution of the sale deed. In support of his contention, he has heavily relied upon judgment of Hon'ble the Supreme Court of India ***Ram Saran Lall and others vs. Mst. Domini Kuer and others*** AIR 1961 SC 1747. Reference has also been made to judgment of the Allahabad High Court ***Ramdeo and another vs. Deputy Director of Consolidation, U.P.Lucknow and others*** AIR 1968 Allahabad 262.

Counsel for the respondent while refuting contention of counsel for the appellant, has submitted that as the sale deed in favour of the respondent was executed on 19.3.1990 though registered on 9.4.1990, the sale deed in favour of the respondent is to be treated having been executed prior to institution of the proceedings on 27.3.1990. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India ***Ittiam and others vs. Cherichi alias Padmini*** 2010(4) RCR(Civil) 158, ***A.Jitendernath vs. Jubilee Hills Coop. House Building Society and another*** 2006(10) SCC 96 and ***Hamda Ammal vs. Avadiappa Pathar*** 1991 (1) SCC 715.

Hon'ble the Supreme Court of India in ***Ram Saran Lall's case*** (*supra*) while dealing with the provisions of Section 54 of the Transfer of Property Act, has held, reads as follows:-

“Under Section 54 of the Transfer of Property Act sale of tangible immovable property of the value of rupees 100/- and upwards, can be made only by a registered instrument. The registration under the Registration Act is not complete till the document to be registered has been copied out in the records of the Registration Office as provided in S. 61 of that Act. Section 47 of the Registration Act has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument or sale is completed cannot be said to have been completed earlier because by virtue of S. 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date.”

The judgment in ***Ram Saran Lall's case (supra)*** was noticed by the Apex Court in all the three judgments referred to by counsel for the respondent. In the latest judgment ***Ittiam and others' case (supra)***, Hon'ble the Supreme Court distinguished the judgment in ***Ram Saran Lall's case (supra)*** and relied upon the judgment in ***A.Jitendernath's case (supra)***. A relevant extract from paras 36 to 38 is quoted hereunder for ready reference:-

“36. A perusal of the decision in **Ram Saran** (supra) makes it clear that the same was rendered on totally different facts and against a completely different legal background. In **Ram Saran** (supra), parties were Hindus, but they were governed by the Mohammedan Law of pre-emption as available to them by custom. The main question discussed in **Ram Saran** (supra) was when can the demand for pre-emption be exercised. The majority opinion of the Court, by a 3:2 verdict, decided that such demand can be made only after completion of the sale. The majority was of the view that a sale is complete not only after registration of the sale deed under Section 47 of the Registration Act but it is complete only after the registered document is copied in the Registration Office, as provided under Section 61 of the Registration Act.

37. We fail to appreciate the relevance of the ratio in **Ram Saran** (*supra*) to the facts of the present case.

38. Two other judgments cited by the learned counsel for the respondent rendered in the case of **Hamda Ammal Vs. Avadiappa Pathar and 3 others** reported in (1991) 1 SCC 715, and that of **A. Jithendernath Vs. Jubilee Hills Coop. House Building Society and another** reported in (2006) 10 SCC 96, are on Section 47 of the Registration Act to the effect that the title passes retrospectively with effect from the date of execution and not from the date of registration. These are accepted legal principles on which there can be no debate but they have no application to the facts of this case.”

In view of enunciation of law laid down in **Ittianam and others' case (supra)**, relied upon by the Court of Appeal as well, there remains no doubt about the settled position in law that the date of registration of sale deed would relate back to the date of execution of the sale deed under Section 47 of the Registration Act. That being so, the Courts below have rightly held that as the sale deed qua a part of the property in question was executed in favour of Bimla Devi on 19.3.1990, she is entitled to protect her possession and ownership against action by the appellant seeking recovery of arrears of maintenance or execution of the

decree passed in her favour against her husband particularly in the circumstances that she was not a party to the lis.

As the sale deed in favour of the respondent was executed even prior to filing of the suit alongwith application to sue as an indigent person, there is no question of sale in favour of the respondent being hit by principle of lis pendence irrespective of the fact whether date of institution of suit is taken as 27.3.1990 or 1996. The question as to whether a suit instituted with an application to sue as an indigent person would be treated to be instituted from the date of its filing or from the date of its registration would be answered in some appropriate case.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

14.7.2016
PARAMJIT