

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

ESA No.40 of 2013(O&M)

Date of decision: January 11, 2016

Parminder Kaur

-----Appellants

V/s

Manjinder Kaur and another

-----Respondents

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. Sunil Panwar, Advocate for the appellant.

Mr. Rakesh Chopra, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Initially Civil Revision No.1243 of 2012 by Parminder Kaur was filed, in which notice of motion was issued. Thereafter, vide order dated 11.07.2013 passed by this Court, it was observed that civil revision is not maintainable. The Civil Revision was ordered to be returned and to be numbered as ESA. Consequently, ESA No.40 of 2013 was assigned to the case and was listed for disposal thereafter.

[2]. Appellant-Paramjit Kaur is the objector in the execution of the decree. Appellant-objector claimed that

previously the judgment debtor and his brothers, namely, Nand Singh and Sardara Singh, were co-sharers in joint possession of the land measuring 7 bigha-14 Biswas-19 Biswasi, situated at village Mullapur. Said Nand Singh, Sardara Singh and judgment debtor sold 4 bigha land to the objector-appellant, vide three different registered sale deeds dated 24.07.2002, 24.07.2002 and 26.07.2002 and the objector-appellant was put in possession of aforesaid 4 bigha of land by the vendors. The Mutation Nos. 1441, 1442 and 1461 were sanctioned in favour of the objector-appellant on the basis of the aforesaid sale deeds, which were duly reflected in the revenue record. In the year 2003, judgment debtor and his brothers threatened to interfere in the possession of the objector-appellant over the land purchased by her, which prompted objector-appellant to file suit for injunction against them qua 4 bigha of land purchased by her. The Civil Suit No.94, dated 12.04.2003, titled as "Parminder Kaur Vs. Nand Singh and others" was contested by the vendors of the appellant, which was decreed in her favour and objector was held to be owner in possession of the property so purchased by her and defendants therein were restrained from interfering in the possession of the objector.

[3]. The judgment-debtor and his brothers being influential persons having say in the police as well as in the revenue authorities illegally got initiated the proceedings under

Section 145 Cr.P.C. and obtained illegal order dated 13.08.2003, the then Sub Divisional Magistrate Bassi Pathana ordered that attachment of land under Section 146(1) Cr.P.C. and Tehsildar was appointed as receiver to take possession of the disputed land and the report was also made in the revenue record. One FIR No.97, dated 09.08.2002 under Sections 406/420 IPC was also got lodged by judgment debtor and his brothers, but the version of the prosecution qua that FIR was not believed by the Court and the accused were acquitted. The judgment-debtor and decree holder were clever persons and they stealthily prepared agreement to sell dated 13.11.2000 in which judgment-debtor Mehar Singh was vendor and Manjinder Kaur was vendee in respect of 2 bigha 11 biswas 13 biswasi @ Rs.2, 40,000/- An earnest money to the tune of Rs.1,91,000/- was shown to have been paid and target date for execution of the sale deed was fixed as 12.01.2001. The vendor and vendee in collusion with each other started litigation *interse* between them and decree holder filed a Civil Suit for possession by way of specific performance of the alleged agreement of sale dated 13.11.2000. The learned trial Court decreed the suit on 25.01.2005. It was one sided suit which was never contested in order to defeat the rights of the objector-appellant. The decree dated 25.01.2005 was obtained from the Court by concealing material facts from the Court and the same was not contested

by judgment-debtor with due care and caution. Decree holder was having the knowledge of sale deeds dated 24.07.2002, 24.07.2002 and 26.07.2002 in favour of the objector-appellant as well as qua the proceedings under Section 145 Cr.P.C., but the court was never informed of those facts and the objector was not arrayed as a party to the said suit. The objector was having no knowledge about the filing of the suit by the vendor as well as passing of the impugned judgment and decree under execution. Though the judgment-debtor had filed an appeal against the judgment and decree dated 25.01.2005, but the same was an eyewash and was an attempt to legalize the illegalities in litigation in order to hide the malafides. The decree holder filed the execution and got the sale deed executed through the agency of the Court and on the basis of sale deed also got sanctioned Mutation No.1535 in her favour by giving false details. The objector-appellant on coming to know about the illegal mutation, filed an appeal against the order dated 02.04.2007 sanctioning the Mutation No.1535 but the appeal was dismissed. The decree holder in connivance with the revenue officials as well as the bailiff got made false reports prepared regarding the execution of warrants of possession which were never executed at the spot and the entire proceedings under Section 145 and 146 Cr.P.C. were materially suppressed and the factum of the passing of judgment and

decree dated 21.07.2004 in Civil Suit No.94 dated 12.4.2003 was also concealed. On coming to know about the judgment and decree under execution at the time of sanctioning of illegal Mutation No.1535 in the month of June, 2007, the objector filed suit challenging the judgment and decree dated 25.01.2005, which is pending and also filed objection on 26.03.2008 in the execution sought to be done in judgment and decree dated 25.01.2005.

[4]. The objector-appellant has assailed the decree on the ground that agreement to sell dated 13.11.2000 is illegal inasmuch as that the same was prepared in order to defeat the rights of the objector

[5]. Vendor-Mehar Singh filed written statement on 27.02.2002 in the suit filed by the decree holder, In the written statement, though the tenor is that the vendor had opposed the suit thereby denying the agreement to sell dated 13.11.2000, which was relied upon by the decree holder in the suit. The filing of written statement with such a ground was taken to be the adequate opposition to the suit filed by the decree holder. The filing of appeal by the judgment-debtor against the judgment and decree of the trial Court has also been taken to be an effort to show that the cause of the decree holder opposed tooth and nail. The Executing Court has taken exception to the suit filed by the objector seeking permanent

injunction against the vendors Sardara Singh, Nand Singh and Mehar Singh to contend that in the said suit the vendors were silent about agreement to sell dated 13.11.2000 executed between the decree holder and them and, therefore, in pursuance of the judgment passed in civil suit No.94 dated 12.04.2003, the vendors were restrained from interfering in possession of the objector in view of the sale deeds dated 24.07.2002, 24.07.2002 and 26.07.2002 was acknowledged. Even the vendors Mehar Singh and Sardara Singh filed an appeal against the judgment and decree passed in a suit for permanent injunction filed by the objector, Mehar Singh did not take any objection regarding pendency of suit between decree holder and judgment debtor having filed on 14.06.2002 on the basis of alleged agreement to sell and that fact has been taken to be the consideration of instance of collusion between judgment debtor and objector.

[6]. Written statement filed on 27.02.2002 in the suit for specific performance in which Mehar Singh did not disclose the factum of filing of suit by Parminder Kaur against him for permanent injunction. The objections have been declined on the ground that the sale deeds dated 24.07.2002, 24.07.2002 and 26.07.2002 executed by Mehar Singh, Nand Singh and Sardara Singh are hit by doctrine of *lis pendens* and plea of bona fide purchaser is not available to the objector-appellant.

[7]. Against the order dated 12.10.2011 dismissing the objections of the objector-appellant, the objector-appellant filed an appeal before the learned Additional District Judge, Fatehgarh Sahib, which has also dismissed by the Additional District Judge, Fatehgarh Sahib vide judgment dated 24.01.2012 and that is how the present ESA came to be filed in this Court.

[8]. I have heard learned counsel for the parties.

[9]. Learned counsel for the appellant has argued that the objections filed by the appellant should have been decided by way of following proper procedure and framing of issues. Objections cannot be decided summarily on the ground of alleged *lis pendens* as well as on the ground that the plea of bona fide purchaser is not available to the appellant-objector.

[10]. Learned counsel for the appellant has further argued that there is apparent collusion between decree holder and judgment debtor in view of written statement filed by Mehar Singh in Civil Suit No.94 dated 12.04.2003 in which the factum of alleged agreement to sell dated 13.11.2000 between Mehar Singh and Manjinder Kaur in respect of land measuring 2 bigha-11 biswas-13 biswasi, was not discussed. Even in the suit filed by the decree holder for specific performance, the factum of possession of the objector-appellant has not been given consideration particularly when judgment and decree came to

be passed only on 25.01.2005. The parties to the suit for specific performance were obligated to implead the objector-appellant on coming to know about the sale deeds dated 24.07.2002, 24.07.2002 and 26.07.2002.

[11]. In the light of the observations made by the Hon'ble Apex Court in **Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and others, 2013 Law Herald (SC)1240** and in **Kasturi Vs. Iyyamperumal & others, 2005(2) R.C.R. (Civil) 691** as well as in the case of **Sumtibai and others Vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) and others, 2007(4) Civil Court Cases 593 (SC)**, learned counsel for the appellant argued that rule of *lis pendens* does not apply in case of collusive decree where the suit and the execution proceedings proved to be collusive. If, it is pleaded by the person resisting the possession that a decree sought to be executed, has been obtained by decree holder in collusion and initiated by not impleading him as a party. It was a question of fact which was to be tried like a suit for which Executing Court has to frame proper issues and thereafter should have proceeded by way of following proper procedure. The exception to Section 50 of Transfer of Property Act to Rule 102 of Order 21 CPC would come into being.

[12]. Order 21 Rule 102 CPC prescribes that 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.

[13]. Learned counsel also argued that Section 52 of Transfer of Property Act, 1882 is an exception in case of collusion. In the present case even though the decree for specific performance has been passed, but the same was not contested by the vendor-Mehar Singh with reference to the affairs of attesting witnesses and, therefore, that was just an eyewash and even, if, the appeal was filed against the judgment and decree dated 25.01.2005, the same was also an eyewash.

[14]. Learned counsel for the appellant cites **Bhagwan Bai Vs. Chiranji Lal and another 2009(5) R.C.R. (Civil) 787** to contend that if the decree is collusive and question involved in the execution is whether the decree is collusive or not, is a question of fact and the same has to be tried like a suit for which the Executing Court should have framed the issue.

[15]. Now, the question which is to be decided in the present appeal is as to whether the Courts below have rightly dismissed the objections without framing issues or should have allowed the objection petition to be treated as a suit in view of provisions of Order 21 Rules 97 and 102 of the CPC? No

doubt, Order 21 Rule 102 of the CPC provide that Rules 98 and 100 of the CPC shall apply to the resistance or obstruction in execution of a decree for the possession of immovable property by a persons to whom the judgment-debtor has transferred the property after the institution of the suit on the ground of lispendens, but the exception in Section 52 of the Transfer of Property Act, 1882 postulates that the suit which is not collusive and in which any right to immovable property is directly and specifically involved, the property cannot be transferred or otherwise dealt with by any party to the suit, so as to affect the rights of any other party thereto under any decree which may be made therein, except under the authority of the Court and on such terms as it may impose.

[16]. An exception provided under Section 52 of the Act is that '*Rule of lispendens*' shall not apply where the suit is collusive and if it proved by the person resisting the possession that the decree which is sought to be executed has been obtained by the decree holder is collusive affair. Therefore, according the the learned counsel for the appellant minimum requirement was to follow the procedure prescribed under law and the objections should have been decided by way of following proper procedure.

[17]. On the other hand, as against this, learned counsel for the respondent has relied upon a judgment of this Court in

Mittar Singh and another Vs. Bhajan Singh and others, 2012(5) R.C.R. (Civil) 630 to contend that the person purchasing the property from the judgment-debtor during the pendency of the suit, stepped into the shoes of the transferees and is bound by the decree. Transferee pendente lite is presumed to have constructive notice of *lis pendens*, therefore, he has to sink and swim together with the transferrers and as such he is not a necessary party.

[18]. Learned counsel for the respondent has further relied upon a judgment of this Court in **Jagir Singh Vs. Tehal Singh and others, 1990 Civil Court Cases 373 (P&H)** and **Paramjit Singh Vs. Mindo and others, 2007(1) Civil Court Cases 676 (P&H)** on the proposition that framing of issues are not required when sale is made during the pendency of a suit and the purchaser is bound by the decree. He also relied upon a judgment of Allahabad High Court in **Abdul Aziz and another Vs. District Judge, Rampur and others, 1993 Civil Court Cases 452 (Allahabad)**, judgment of Bombay of High Court in **West Coast Paper Mills Ltd Vs. Trustees of the Port of Bombay, 2000(2) Civil Court Cases 339 (Bombay)** as well as the judgments of Karnataka High Court in **Kanthilal Vs. Smt. Padma Maiya and others 1999(2) Civil Court Case 602 (Karnataka)** and in **A.M. Subbamma Vs. A.V. Kushalappa**

and others 2007(4) Civil Court Case 656 (Karnataka).

highlighted that when a relief in the suit as well as in the application are one and the same, the appellant cannot be permitted to pursue the remedy in two different proceedings. When the appellant has already availed the remedy of filing the suit in the opinion of the Court on the same set of facts, appellant cannot maintain the application under Order 21 Rule 97 of the CPC.

[19]. Apparently, the judgment and decree dated 25.01.2005 has already been assailed by the objector-appellant by way of Civil Suit which is statedly pending before the trial Court. Admittedly, the sale deeds dated 24.07.2002, 24.07.2002 and 26.07.2002 came to be executed in respect of 7 bigha-14 biswas of land during the pendency of civil suit for specific performance which was filed on 29.01.2001. The plea of collusive nature of suit cannot be entertained in view of the fact that the suit for specific performance contested by the vendors, namely, Mehar Singh and Sardara Singh by way of filing contested written statement and even against the judgment and decree dated 25.01.2005, the appeal was filed before the Lower Appellate Court and the same was dismissed.

[20]. In view of the aforesaid, there cannot be any inference that the civil court decree dated 25.01.2005 was a collusive affair between judgment debtor and the decree holder.

[21]. Having considered the submission in the light of the proceedings taken above, the appellant cannot be granted any indulgence by this Court in view of the fact that all the three sale deeds came to be executed during the pendency of suit for specific performance, which was filed on 29.01.2001 and even the judgment and decree dated 25.01.2005 has already been assailed by the objector-appellant by way of Civil Suit which is statedly pending before the trial Court, this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

**(RAJ MOHAN SINGH)
JUDGE**

January 11, 2016
Anjal