

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

ESA No.189 of 2016(O&M)

Date of decision:18.5.2016

Sandeep Verma

....Appellant

VERSUS

Bachan Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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. Akshay Jindal, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against orders dated 11.02.2016 passed by the Additional Civil Judge (Senior Division), Naraingarh, whereby the objection petition preferred by the appellant was dismissed and dated 21.04.2016 passed by the Additional District Judge, Ambala vide which the appeal preferred by the appellant against order dated 11.02.2016 passed by the executing Court has been dismissed, affirming the findings recorded by the executing Court.

Bachan Singh-respondent No.1 filed a suit for possession by way of specific performance of the agreement to sell dated 10.02.2003 in respect of land measuring 1 kanal 19 marlas, detailed in head-note of the plaint (Annexure A-1) against Raj Kumar, Amrit Lal sons of Amarnath, Satish Kumar son of Shakuntla and Baldev Singh son of Baryam Singh. The suit was decreed vide judgment and decree dated 01.03.2011. A relevant extract from the same reads as follows:-

“9. In view of my findings on above said issues, especially on issues no.1 and 2 suit of the plaintiff succeeds and same is hereby ex parte decreed with costs for possession by way of specific performance of the Agreement to sell dated 10.02.2003 regarding the land measuring 1 K – 19M bearing khewat/khatauni no.575/629 khasra No.53//25/1/4 measuring 1K – 17 M (whole) and khewat/khatauni No.569/632 khasra No.53//24/1/2 (0-8), 25/1/2 (0-2), total 0K-2M, total land measuring 1K-19M as per jamabandi for the year 1997-98 situated at village Naraingarh H.B. No.88 Teh. Naraingarh, Ambala on payment of balance sale consideration of Rs.1,55,000/- out of total sale consideration of Rs.2,55,00/- and for declaration that the sale deed dated 15.12.2003 executed by defendants No.1 and 2 in favour of defendant no.4 in respect of the land measuring 1 kanal – 4-1/2 Marlas being 2/3 share out of 1K-17M bearing khewat/khatauni No.575/629 khasra no.53//25/1/4 is wrong, illegal null and void, ineffective and is not binding upon the rights of the plaintiff and is hereby set aside. The defendants are restrained from alienating, constructing and creating any charge over the land in question in any manner. Decree sheet be prepared accordingly and file be consigned to record room after due compliance.”

Bachan Singh filed an application for execution of the aforesaid decree wherein the present appellant filed third party objections. The Court after having heard counsel for the parties, dismissed the objection petition and the order passed by the executing Court has been affirmed in appeal.

Counsel for the appellant has assailed the findings of the Courts below primarily on one count. It is argued that though it is admitted that the present appellant is a transferee *pendente lite* as he purchased the property vide sale deeds dated 22.11.2004 and 27.04.2005 but the same is not hit by the provisions of Section 52 of the Transfer of Property Act, 1882 (in short ‘the Act’). The judgment and decree dated 01.03.2011 has been obtained by the decree holder in connivance with the JDs by concealing true and material facts and playing fraud upon the objector. To substantiate his contention, it is argued that Baldev Singh

(defendant No.4) did not appear in the case and Satish Kumar (defendant No.3) absented after filing the written statement. It is further argued that as the objector had raised a plea of collusion between the decree holder and JDs and collusion being a question of fact, it was incumbent upon the executing Court to frame issues and permit the parties to adduce evidence, therefore, the orders passed by the Courts below are liable to be set aside and the matter should be remitted to the executing Court for decision afresh after following due process in accordance with law. In support of his contention, he has referred to judgment of this Court Bhagwan Bai vs. Chiranjil Lal and another, 2009 (5) RCR (Civil) 787.

I have heard counsel for the appellant and perused the paper-book.

It is an undisputed position of the case that the present appellant is a transferee *pendente lite* as he purchased the property in dispute from Sh. Satish Kumar (defendant No.3) and Sh. Baldev Singh (defendant No.4) vide registered sale deeds dated 22.11.2004 and 27.04.2005. To decide the controversy raised by the appellant, it is necessary to refer to Section 52 of the Act and a relevant extract therefrom reads as follows:-

“52. Transfer of property pending suit relating thereto
During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir Government or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.”

A plain reading of Section 52 would make it evident that rule of *lis pendens* shall not apply where the suit or proceedings are collusive.

The question that arises for consideration is whether the mere fact that the present appellant has raised a plea that decree dated 01.03.2011 has been obtained by the decree holder in connivance with the JDs by concealing the true and material facts and by playing fraud upon the objector, is sufficient to accept his contention that the objection petition was required to be decided after framing of issues and on the basis of evidence. It cannot be denied that every objection petition is not required to be decided by framing of issues or adducing of evidence by the parties. Equally true is that it depends upon the facts and circumstances of each individual case as to whether dispute raised by the objector requires adjudication on the basis of evidence or can be decided on the basis of pleadings of the parties.

In the case at hand, the defendants No.1 to 3 filed their detailed written statement to resist claim of the plaintiff/decreed holder for specific performance of the agreement. By way of preliminary objections in para 3, it has been categorically averred that they have sold the land in question and as such suit of the plaintiff deserves dismissal. Again in para 15, it has been pleaded that defendants No.1 and 2 had sold their share to defendant No.4 for valuable consideration. The sale deed is binding upon the plaintiff. Defendant No.4 has also sold his share since the plaintiff failed to perform his part of the agreement. As such, suit of the plaintiff is liable to be dismissed with costs. As the defendants have clearly pleaded in the written statement that the suit property already stood sold, where was the question of their being in collusion with the plaintiff/decreed holder.

This apart, as Satish Kumar and Baldev Singh have sold the property in favour of the appellant before filing the written statement by defendants No.1 to 3, defendants were left with no right or interest in the lis pending at the instance of plaintiff/decreed holder -Bachan Singh. In these circumstances, it is difficult to accept contention of the appellant that in view of the plea raised in the objection petition, the plea of connivance or fraud was required to be decided on the basis of issues/evidence.

The judgment in Bhagwan Bai's case (supra) relied upon by counsel for the appellant is on entirely different facts and hence, this Court accepted plea of the appellant/objector that question of collusion pleaded by Bhagwan Bai is required to be decided on the basis of evidence to be adduced by the parties after framing of issues. In the said case, respondent No.2/JD entered into an agreement with the objector/appellant for sale of land in dispute at the rate of Rs.80,000/- per acre and executed agreement of sale dated 31.03.1998 and received a sum of Rs.50,000/- towards earnest money. Date for execution of the sale deed was fixed as 30.03.1999 but actual possession of the land in dispute was delivered to the appellant on 30.04.1998 in part performance of the agreement of sale. Since the sale deed could not be registered on 30.03.1999, therefore, time for registration of sale deed was extended with mutual agreement upto 04.07.2000. The sale deed in respect of the land in dispute was executed in her favour on 30.06.2000 on receipt of entire balance sale consideration before the Sub Registrar and symbolic possession was delivered to her. It was alleged by the appellant/objector that respondent No.2 in the meantime colluded with the decree holder/respondent No.1 and executed a fictitious agreement of sale in respect of land in dispute in his favour. On

21.06.1999 despite having already executed agreement of sale dated 31.03.1998 in favour of the appellant and the sale price was fictitiously settled at the rate of Rs.1,50,000/- per acre, the date for execution of sale deed was fixed as 22.12.1999. However, the said date was mutually extended to 04.01.2000, on which date, respondent No.1 was stated to have attended the office of the Sub Registrar, Rania, but respondent No.2 alleged to have failed to come present and thereafter, respondent No.1 issued a notice to respondent No.2 calling upon him to execute the sale deed on or before 03.02.2000. Respondent No.1 was stated to have gone to the office of Sub Registrar on 03.02.2000 but respondent No.2 was alleged to have not turned up and consequently respondent No.1 filed a suit for possession of the land in dispute by way of specific performance of agreement of sale dated 30.06.1999 on 01.05.2000 against respondent No.2 and the appellant was not deliberately made a party to the suit.

In view of the peculiar facts and circumstances obtaining in the case of the referred authority, the Court arrived at a conclusion that plea of collusion between the JD and decree holder raised by the objector (purchaser in possession of the suit land) was required to be decided on the basis of evidence. On the contrary, in the case at hand, the JDs denied their liability to execute the sale deed with a specific plea that suit property has already been sold by the defendants. This apart, as the decree holder had already filed a suit on the basis of agreement to sell before the objector came into picture on the basis of sale made in his favour vide two sale deeds executed during pendency of the proceedings, the objector cannot be heard to say that the decree holder has colluded with the JD either in preparing an agreement to sell or filing a suit for specific performance

thereof. In view of the above, I do not find any merit in the contentions raised by counsel for the appellant.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in *limine*.

MAY 18, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE