IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.4574 of 2011 (O&M)
Date of decision : 04.11.2016

Tax Recovery Officer-I, Income Tax Department

...Appellant

Versus

Mohindra Finance & Lucky Scheme Pvt. Ltd. and others

..Respondents

2. RSA No.4578 of 2011 (O&M)
Date of decision : 04.11.2016

Tax Recovery Officer-I, Income Tax Department

...Appellant

Versus

Mohindra Finance & Lucky Scheme Pvt. Ltd. and others

..Respondents

3. RSA No.4579 of 2011 (O&M)
Date of decision : 04.11.2016

Tax Recovery Officer-I, Income Tax Department

...Appellant

Versus

Mohindra Finance & Lucky Scheme Pvt. Ltd. and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Rajesh Katoch, Advocate for the appellant.

Mr. Balbir Singh, Advocate

Mr. J.S. Dadwal, Advocate for respondent No.3.

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned three regular second appeals filed at the instance of defendant No.3-appellant-Tax Recovery Officer-I, Income Tax Department, Ludhiana against the judgment and decree rendered by both the Courts below, whereby suit seeking specific performance of agreement to sell in respect of following land:-

i) Agreement to sell dated 12.08.1992 executed by defendant Nos.1 and 2 in favour of respondent-plaintiff in respect of plot No.55, measuring 150 sq. yards for total sale consideration of ₹15,000/- in RSA No.4574 of 2011 arising out of Civil suit No.39 of 1995.

ii) Agreement to sell dated 28.05.1991 executed in respect of plot No.58, measuring 194 sq. yards agreed to have been sold for total sale consideration of ₹23,280/- in RSA No.4578 of 2011 arising out of Civil suit No.86 of 1995.

iii) Agreement to sell dated 31.03.1992 executed in respect of plot No.33, measuring 193 and 1/3 sq. yards agreed to have been sold for a total sale consideration of ₹19,333/- in RSA No.4579 of 2011 arising out of Civil suit No.60 of 1995.

has been decreed.

Mr. Rajesh Katoch, learned counsel appearing on behalf of appellant-Tax Recovery Officer-I, Income Tax Department, Ludhiana submits that vendor was defaulter of the Income Tax Department as a result thereof, recovery proceedings were initiated and the date of service of the notice under Rule 2 of the Second Schedule of the Income Tax in respect of all the three plots is dated 07.04.1988 and the service was effected upon defendant Nos.1 and 2 on 23.04.1988. The agreement to sell as noticed above was entered into later on whereas attachment order is dated 23.12.1993 and proclamation thereof is dated 28.12.1993. In support of his contention, he has relied upon Rule 16(1) and Rule 51 of Second Schedule that the attachment will relate back from the date of service of notice and thus submits that agreement to sell was null and void and Court ought not to have ordered for discretionary relief. At the best, plaintiff is entitled to refund of the earnest money, thus, there is illegality and perversity.

Per contra, Mr. Balbir Singh, and Mr. J.S. Dadwal, learned counsel appearing on behalf of respondent No.3-plaintiff submits that Income Tax Department had already settled with similar situated persons and had withdrawn the attachment order. He further submits that it was vendor who was in default of arrears of the Income Tax Department and recovery of attachment order has nothing to do with the vendee/plaintiff as there was independent contract which has been proved through the testimony of the attesting witnesses, thus, there is compliance of Section 68 of the Indian Evidence Act. The passing of the consideration has also been proved, thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for parties and appraised the paper book and of the view that there is no dispute with regard to the applicability of the provisions of Income tax Rule referred above. For the sake of brevity, same are reproduced hereinbelow:-

Schedule-II

Rule 16(1):-

"Where a notice has been served on a defaulter under rule 2 the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of decree for the payment of money"

Rule 51:-

"Where any immovable property is attached under this schedule, the attachment shall relate back to, and take effect from, the date on which the notice of pay the arrears, issued under this schedule was served upon the defaulter."

As per the provisions of Rule 51, attachment would relate back to the date of service of the notice. It is conceded position that agreement to sell is of subsequent date. Be that as it may, but the fact remains that nothing prevents the appellant/defendant No.3 from seeking recovery of the arrears, if any, from the property already attached even if it has been exchanged by virtue of the decree passed in the suit aforementioned seeking performance of the agreement to sell as buyer was to be careful and had to adopt the principle of "*Buyer Beware*". Once he has purchased the property of the company, he can not object to the same at any stage neither in proceedings nor in subsequent one contemplated to be initiated or pending before the competent court.

With the aforementioned observation, I am of the view that grievance of the appellant-Tax Recovery Officer-I, Income Tax Department, Ludhiana stands vindicated.

While affirming the findings under challenge and with the aforementioned observation, appeals stand disposed of.

04.11.2016 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**