

In the High Court of Punjab and Haryana at Chandigarh

SAO No. 5 of 2012(O&M)
Date of Decision:28.4.2016

Major Singh

---Appellant

vs.

Didar Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Vaibhav Sehgal, Advocate
for the appellant

Mr. Rahul Rampal, Advocate
for respondent No. 1

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 has been directed against the judgment dated 20.8.2011 passed by the Additional District Judge, Ludhiana whereby the appeal preferred by Didar Singh respondent No. 1 against order dated 25.8.2009 passed by the trial court rejecting the plaint under Order 7 Rule 11 of the Code of Civil Procedure (for short “CPC”) and dismissing the application under Order 39 Rules 1 and 2 CPC, has been allowed.

A brief backdrop of the case is that Major Singh appellant filed

a suit against Darshan Singh and Nirmal Singh (proforma respondents) for specific performance of agreement to sell dated 19.8.1995 in respect of land detailed in para 2 of the grounds of appeal situated at village Bool, 319 Tehsil and District Ludhiana. In the said suit, a prayer was made that sale deed executed by respondent No. 2 in favour of respondent No. 3 for land measuring 4 kanals out of the property in dispute in contravention of the agreement to sell be set aside. The suit filed by the appellant was decreed by the trial court vide judgment and decree dated 21.1.2005 and respondent No. 2 was directed to execute the sale deed in favour of the appellant and the sale deed executed by respondent No. 2 in favour of respondent No. 3 was set aside. The appeal preferred by respondent No. 3 against the judgment and decree dated 21.1.2005 was dismissed by the first appellate court. Respondent No. 3 sold land measuring 4 kanals purchased by him from respondent No. 2 in favour of respondent No. 1 vide registered sale deed dated 14.10.2004.

Respondent No. 1 filed a suit seeking declaration that he is owner in possession of land measuring 4 kanals, detailed in head note of the plaint and the decree dated 21.1.2005 passed in civil suit No. 637/96 in favour of defendant No. 1 (Major Singh) against defendants No. 2 and 3 (Darshan Singh and Nirmal Singh respectively) is illegal, null and void and is not binding upon him. Alongwith the suit, an application was filed under order 39 Rules 1 and 2 read with Section 151 CPC for grant of ad interim injunction. The learned trial court while hearing the application for grant of interim injunction not only dismissed the application but also rejected the plaint by invoking the provisions of Order 7 Rule 11 (d) CPC by holding

that the suit being not maintainable is barred by law and the plaint is liable to be rejected.

Feeling aggrieved by the order passed by the trial court, an appeal was preferred by respondent No. 1, that has been allowed by the Additional District Judge, Ludhiana vide order impugned in the present proceedings.

Counsel for the appellant has submitted that suit filed by the appellant seeking specific performance of the agreement dated 19.8.1995 against respondents No. 2 and 3 was instituted in the year 1996 and it culminated into the judgment and decree dated 21.1.2005 passed in his favour that has attained finality. It is further argued that sale deed executed in favour of respondent No. 1 by respondent No. 3 qua part of the suit land i.e. land measuring 4 kanals vide sale deed dated 14.10.2004 is clearly barred by the principle of lis pendence and thus respondent No. 1 is bound by the judgment and decree dated 21.1.2005, later affirmed in appeal. It is further argued that Didar Singh respondent No. 1 by misusing and abusing process of law filed the suit for declaration despite being a purchaser pendente lite and the said fact is duly incorporated in the plaint filed by him. It is further argued that plea of bona fide purchaser for consideration without notice of litigation is not available to a transferee pendente lite, therefore, the respondent cannot maintain a suit by taking plea of bona fide purchaser without notice of litigation. In support of his contention, he has referred to judgment of this Court **Inderjeet Wadhwa vs. Jagjit and another 2005(2) R.C.R.(Civil) 316**. It is further argued that the learned trial court rightly rejected the plaint on the ground of non-maintainability of

the suit, therefore, barred by law by invoking Order 7 Rule 11 (d)CPC but the first appellate court erroneously and illegally intervened in the order passed by the trial court and accepted the appeal. In addition, it is submitted that even if plea of the respondent is accepted that he was not provided with an opportunity of hearing before deciding the question of rejection of plaint, the appellate court should have remitted the matter to the trial court for decision afresh after providing an opportunity of hearing to the parties but the appellate court committed a gross error in deciding the question of rejection of plaint on merits and upholding plea of respondent No. 1.

Counsel for the contesting respondent, on the contrary, has submitted that as the question of lis pendence is a mixed question of fact and law, the same cannot be adjudicated upon without framing an issue and permitting the parties to adduce evidence in support of their respective claims. It is further argued that the learned trial court committed a serious error in rejecting the plaint while hearing the application for interim injunction and mistake committed by the trial court has rightly been rectified by the Court in appeal. In support of his contention, he has relied upon judgment of this Court **Rupinder Singh vs. Sajjan Singh alias Balbir Singh and another 2005(3) R.C.R.(Civil) 517.**

I have heard counsel for the parties, perused the records, a copy of the plaint in the suit titled “Didar Singh vs Major Singh and others” supplied during course of arguments, the impugned order and the judgments relied upon.

It is an undisputed position of the case that Major Singh appellant filed a suit for possession by way of specific performance of an

agreement to sell purported to be executed by Darshan Singh and in the said suit, sale deed in regard to part of the suit land executed by Darshan Singh in favour of Nirmal Singh was also challenged. The suit was instituted in the year 1996 and decreed by the learned trial court in January 2005. During pendency of the suit, Nirmal Singh further alienated land measuring 4 kanals purchased by him from Darshan Singh in favour of Didar Singh respondent No. 1 vide sale deed dated 14.10.2004. It is also an admitted fact that Didar Singh was not a party to the suit filed by Major Singh against Darshan Singh and Nirmal Singh.

Didar Singh filed the instant suit for declaration to stake his claim in regard to land measuring 4 kanals on the basis of sale deed dated 14.10.2004 and further assailed the judgment and decree dated 21.1.2005 passed in favour of Major Singh in the earlier proceedings. In the plaint, he has taken up the plea that he is a bona fide purchaser of the suit property without notice of pendency of the civil suit.

There cannot be dispute about the settled position in law that the question with regard to rejection of plaint by invoking Rule 11 of Order 7 CPC can be decided only on the basis of averments set up in the plaint without looking into any other documents produced by either of the parties or the plea in defence raised in the written statement. It is also not denied that the learned trial court while disposing of an application for grant of interim injunction under Order 39 Rules 1 and 2 CPC in the suit preferred by Didar Singh dismissed the application by holding that the suit filed by Didar Singh is not maintainable and thus barred by law and the plaint is liable to be rejected under Order 7 Rule 11 CPC. Respondent No. 1 had

raised a plea before the appellate court that the trial court passed the order of rejection of plaint without providing an opportunity of hearing to him in this regard. The moment the appellant has raised such a contention and if the same was found to be correct, the only course open for the Court in appeal is to set aside the order and remit the matter to the trial court for decision afresh after hearing the parties in accordance with law. However, the appellate court without adopting the proper course proceeded to decide that question itself.

Counsel for the parties have not disputed that question of rejection of a plaint can be decided by the court suo motu without any application by the defendant. They have also not disputed that question of rejection of plaint can be decided by the court at any stage of the proceedings. In this view of the matter, I find merit in the contentions of the appellant that the order passed by the court in appeal setting aside the order passed by the trial court in regard to rejection of plaint cannot be allowed to sustain and the matter is required to be remitted to the trial court for decision of the said question after hearing counsel for the parties.

Though this court should have refrained from advertng to the issue, whether the question of lis pendence is a mixed question of fact and law by referring to judgment of this Court in **Rupinder Singh's case (supra)** lest it may prejudice either of the parties before the trial court but at the same time it is pertinent to mention that in para 4 of the judgment in **Rupinder Singh's case (supra)**, this Court after referring to various facts has held, reads as follows:-

“Having heard the learned counsel I am of the considered

view that no interference in the findings recorded by the two Courts would be warranted. There are categorical findings that defendant-appellant No. 1 has executed agreement to sell dated 20.1.1994 and the sale-deed was required to be executed on or before 1.3.1994. It has further been proved that defendant-appellant No. 1 received a sum of Rs. 20,000/- as earnest money as against the total consideration of Rs. 91,000/- settled between the parties. In his effort to defeat the right of the plaintiff-respondent, defendant-appellant had executed sale-deed on 15.2.1994 after the institution of the suit in favour of his real sister which has been set aside on the plea of principle of lis pendence contemplated by Section 52 of the Transfer of Property Act, 1882. These are pure findings of facts which would not warrant interference of this Court in exercise of jurisdiction under Section 100 of the Code. No question of law infact has been raised.”

In the said case, this Court was not dealing with the issue whether the plaint is liable to be rejected on account of the suit being barred by principle of lis pendence. On the contrary, the Court was dealing with a regular second appeal filed under Section 100 CPC challenging concurrent findings of fact recorded by the courts below holding that Rupinder Singh had entered into an agreement to sell the suit land and had received Rs. 20,000 in cash on 20.1.1994 and the sale deed was to be executed by

1.3.1994 resulting in acceptance of claim of the contesting respondent for specific performance of the agreement to sell. The first appellate court without adverting to the questions involved in the appeal as well as the observations recorded by this Court in the light of various facts incorporated in para 4 has set aside the order by holding that question of lis pendence is a mixed question of fact and law.

In view of what has been discussed hereinabove, the appeal is allowed, the judgment passed by the court in appeal and the order passed by the trial court dated 25.8.2009 are set aside. The matter is remitted to the trial court for decision afresh as to if the plaint is liable to be rejected under Order 7 Rule 11(d) CPC, after hearing the parties.

Parties through their counsel are directed to appear before the trial court on 30.5.2016. The trial court shall decide the aforesaid plea without being influenced by any observations made by the court in appeal or by this Court.

(Rekha Mittal)
Judge

28.4.2016
paramjit