

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-2404-2014(O&M)

Date of decision : 19.01.2016

Hawa Singh

... Appellant

Versus

Sat Parkash

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Abhinav Sood, Advocate
for Mr. Vikram Singh, Advocate
for the appellant.

REKHA MITTAL. J.(ORAL)

The present appeal has been directed against the concurrent findings recorded by the Courts below whereby the suit filed by the respondent-plaintiff Sat Parkash for possession of the suit property was decreed by the trial Court and the findings recorded by the trial Court were affirmed in appeal.

Counsel for the appellant has assailed the judgments passed by the Courts below primarily on two counts. The first submission made by counsel is that the respondent filed the suit without challenging the lease deed dated 19.09.2000, therefore, his claim for possession of suit land cannot be sustained. Another submission made by counsel is that as the appellant was not aware of pendency of litigation in the Court, his plea

of being a bonafide lessee is liable to be accepted.

I have heard counsel for the appellant and perused the records.

So far as the plea in regard to challenge to the lease deed dated 19.09.2000 is concerned, as the said lease deed came into existence during pendency of suit filed by the respondent in the year 1997 seeking specific performance of agreement dated 25.10.1996, the same is hit by principle of lis pendens and was subject to outcome of civil suit No.299 dated 25.07.1997, admittedly decided in favour of the respondent. In this view of the matter, there is no merit in the contention of the appellant that the respondent was required to assail the lease created in favour of the appellant during pendency of the earlier suit.

With regard to plea of the appellant's being a bonafide lessee for consideration, the learned appellate Court has dealt in detail the implications of Section 52 of the Transfer of Property Act viz-a-viz transfers effected during pendency of the suit. By relying upon judgment of Hon'ble the Supreme Court of India in ***Yogeshwar Education Trust Vs. Gurmeet Kaur and others, 2009(2)CCC 345***, the Court has held that protection of bonafide purchaser under Section 41 of the Transfer of Property Act is not available where property has been sold during pendency of suit and principle laid down in Section 52 of the Transfer of Property Act shall be fully applicable. Counsel for the appellant is not in a position to cite any contrary law that transferee pendente lite is entitled to

protection of Section 41 of the Transfer of Property Act. In view of the above, no fault can be found in the findings of the Courts below that the appellant is not entitled to seek aid to his case by raising the plea of bonafide lessee for consideration.

No other point has been raised.

In view of what has been discussed hereinabove, neither any substantial question of law arises for adjudication as has been sought to be raised in the grounds of appeal nor there is any error much less illegality in the consistent findings recorded by the Courts below. As a result, the appeal fails and is accordingly dismissed with no order as to costs.

(REKHA MITTAL)
JUDGE

January 19, 2016.
Davinder Kumar