

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

R.S.A.No.5852 of 2014 (O&M)

Date of Decision: November 10th, 2016

Smt.Malti Devi

...Appellant

Versus

Sunil Kumar & others

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.M.L.Sarin, Senior Advocate with
Ms.Alka Sarin, Advocate,
for the appellant.**

**Mr.B.R.Mahajan, Senior Advocate with
Mr.Prateek Mahajan, Advocate,
for respondent No.1.**

**Mr.Gopal Sharma, Advocate,
for respondent No.2.**

AMIT RAWAL, J.

Appellant is a subsequent purchaser of the property from Rajesh Kumar-defendant No.1 (respondent No.2 herein) and Kumari Sunita-defendant (since deceased) during the pendency of the suit.

The preface of the matter is that on 26.10.1989, plaintiff-respondent No.1 instituted the suit for possession by way of pre-emption against Rajesh Kumar-defendant (respondent No.2) and Kumari Sunita-defendant (since deceased) and the vendor-respondent No.3 Ram Singh alleging himself to be a co-sharer in the property. The suit, aforementioned, was contested by defendant No.1 and Kumari Sunita, who were minor at that time through their father Raghubir Singh by filing written statement, wherein it was categorical admission of having purchased the suit land from vendor-defendant No.3 for a sum of 1,06,800/-. The trial Court decreed the

suit for possession by way of pre-emption vide judgment and decree dated 1.3.1995 subject to payment of 1,06,800/- (less zare panjam already deposited).

The contesting respondents, namely, defendant-respondent No.2 and his sister preferred an appeal before the Lower Appellate Court, which was allowed by judgment and decree dated 18.11.1995 passed in Civil Appeal No.74A of 1995 taking into consideration the amendment caused in the Haryana Amendment Act, 1995. Regular Second Appeal bearing No.199 of 1996 was preferred in this Court and this Court while relying upon the judgment rendered by the Hon'ble Supreme Court in **Shyam Sunder & Anr. Versus Ram Kumar & Anr., JT 2001 (6) SC 94,** remanded the matter back to the Lower Appellate Court for fresh decision. Thereafter, i.e., on 27.1.2006, the appellant is stated to have sold land measuring 26 kanals 14 marlas to defendant No.2-Rajesh and his sister Sunita vide sale deed dated 27.1.2006. The said sale deed was tendered by the aforementioned defendant before the Lower Appellate Court. It was stated that the subsequent vendees should be arrayed.

Mr.M.L.Sarin, learned Senior Counsel assisted by Ms.Alka Sarin, representing the appellant, submits that the factum of litigation was not disclosed to the appellant herein, though she was put in physical possession and constructed a Kothra and also installed a hand pump. Even mutation No.4023 was duly sanctioned on 31.5.2006. Defendant No.2-Sunita, after attaining the majority, died. It was the incumbent duty of the Lower Appellate Court to have resorted to the provisions of Order 41 Rule 17 CPC.

He further submits that in 2012, a part of land measuring 4

kanals 2 marlas was acquired by the Indian Railways comprised in Rect.No.27, Killa No.2, Rect.No.21, Killa No.21, 22/1, 20 & 19/2. The appellant applied for receiving the compensation on 27.7.2011 and 19.4.2012. It is only then, acquired the knowledge of the judgment and decree rendered by the Lower Appellate Court after the remand, on 4.10.2006, whereby the appeal was dismissed, in essence the judgment and decree of the trial Court was restored. Rajesh-defendant-respondent No.2 did not prefer any regular second appeal for the simple reason that he had no interest left in the case. Appellant, thus, applied for the certified copies of the judgment and decree dated 1.3.1995 of the trial Court, grounds of appeal dated 8.3.1995 and judgment and decree dated 18.11.1995 and after remand, judgment and decree dated 4.10.2006. The same were supplied on 5.6.2012 and the appeal was filed before the Lower Appellate Court. However, the Lower Appellate Court dismissed the application seeking condonation of delay and as well as the appeal holding it to be not maintainable vide judgment and decree dated 19.8.2014. It is in this aspect of the matter, all the three judgments, noticed above, i.e. 1.3.1995, 4.10.2006 and 19.8.2014 are under challenge. Under these circumstances, the delay of 2816 days occurred.

‘ This Court had issued notice of the application bearing No.13884-C of 2014 and as well as CM No.290-C of 2015 seeking leave of this Court to file the appeal against the judgments and decrees dated 1.3.1995 and 4.10.2006, but no reply has been filed vis-a-vis CM No.290-C of 2015 seeking leave of this Court. He further submits that the matter should be remanded back to the Lower Appellate Court by giving opportunity to the appellant to raise all possible pleas, particularly the

additional evidence sought to be placed on record, i.e., the registered sale deed dated 17.2.1983 executed by Smt.Preeti Bhargav to defendant-respondent No.3 Ram Singh as plaintiff-respondent No.1 in the civil suit did not seek any pre-emption and, therefore, he is estopped from filing the suit. All these factors would, at the earlier point of time, be necessary for consideration in case, after condonation of delay, the matter is remanded back, in essence, the plaintiff waived his right to re-empt despite being co-sharer, the land as way back as on 17.2.1983. The appellant is bonafide purchaser without notice and despite due diligence found nothing in the revenue record, thus, purchased the property. He further submits that once the Lower Appellate Court has already held that the appeal itself was not maintainable. It was not proper for it to have gone into the merits of the case.

Per-contract, Mr.B.R.Mahajan, learned Senior Counsel assisted by Mr.Prateek Mahajan, representing respondent No.1-plaintiff submits that the present appeal is hopelessly barred by law of limitation and liable to be dismissed on this ground. As per the order dated 19.9.2014 passed by the Executing Court, warrants of possession have already been issued and the possession had been obtained and the execution application had been disposed of. Copy of the order has been attached as Annexure R-1 with the reply to the application bearing No.13884-C of 2014. He further submits that filing of the appeal before the Lower Appellate Court, on enquiring the knowledge of judgment and decree dated 4.10.2006, was not maintainable and the remedy was to file the appeal by seeking leave of this Court, therefore, there is intentional delay of two years. He further submits that composite appeal against two judgments and decrees dated 4.10.2006 and

19.8.2014 is not maintainable. The respondent had been prosecuting the proceedings since 1989, which finalised on 4.10.2006 and, thus, urges this Court for dismissal of the appeal on condonation and as well as on merits.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Sarin vis-a-vis seeking condonation of delay and as well as on the merits, for, it cannot be believed that the appellant did not have the knowledge of the proceedings, particularly when the vendor, defendant in the suit instituted by the plaintiff, had disclosed about parting of the title and interest in their favour. The principle of “Buyer Beware” has not been followed in its letter and spirit. In my view, the purchase of the property is during litigation, i.e., at the time when there was a judgment and decree in favour of the vendor. It cannot be believed that she was not aware of the proceedings. In my view, the appellant had not been candid in approaching this Court.

This Court, while hearing the matter, called upon the counsel representing the appellant to show any case law where earlier point of time one of the co-sharer had sold the share and the same was not pre-empted, would there be an estoppel or acquiescence for the plaintiff to seek vindication of the litigation by filing the suit for pre-emption, but no judgment in this regard has been pointed out as there is no estoppel for the purpose of pre-emption as the law of pre-emption was in vogue at the relevant point of time.

The appellant should have filed the appeal against the judgment and decree dated 4.10.2006 straightway in this Court instead of filing the appeal in the same Court, i.e., against the judgment and decree including of

trial Court before the Lower Appellate Court and in this process, occurred delay of two years. In my view, such delay has gone unexplained. The appellant even cannot take the benefit of wrong legal advice at the relevant point of time. Since the execution of the judgment and decree has already been satisfied and possession has been taken, it would be total unethical/atrocious/fallacious for putting the clock back by granting liberty to the appellant to re-agitate the issue once the things have already set at rest. It is high time that the litigation should be put to rest. At the best, the appellant can seek the compensation from the vendor in terms of money, but cannot contest the right of pre-emption.

Mr.Sarin, during the course of arguments, has also referred to the case law, particularly the judgment rendered by the Hon'ble Supreme Court in **Hardevinder Singh Versus Paramjit Singh and others, (2013) 9 Supreme Court Cases 261** to contend that the third party can maintain the appeal against the judgment in case his right is adversely affected or prejudicially affected by a decree. He also submitted that the doctrine of *lis pendens* in stricto-sensu would not apply and in this regard referred to the ratio decidendi culled out by the Hon'ble Supreme Court in **Thomson Press (India) Limited Versus Nanak Builders and Investors Private Limited and others.**

With regard to condonation of delay, relied upon the judgment rendered in **N.Balakrishnan Versus M.Krishnamurthy, 1998 (6) JT 242** and on same lines **Ram Nath Sao alias Ram Nath Sahu and others Versus Gobardhan Sao and others, AIR 2002 Supreme Court 1201** and for the purpose of additional evidence relied upon the judgment rendered in **Lachhman Singh (Deceased) through Legal Representatives & Ors.**

Versus Hazara Singh (Deceased) through Legal Representatives & Ors., 2008(7) Judgments Today 129.

There is no dispute to the ratio decidendi culled out in the judgments relied upon, particularly in Hardevinder Singh (supra), whereby the appeal by the third party against the decree which prejudicially or adversely affected the person can be maintained, but the fact remains that filing of the appeal by the appellant herein would be complete farcical exercise in view of the findings rendered here-in-above.

As regards condonation of delay, I am of the view that the Court should be liberal in condoning the delay, but should be circumvent whether, while condoning the delay, a useful purpose would be served or not. Once it was brought to the notice of the appellant regarding maintainability of the appeal against the judgment and decree dated 4.10.2006, she should have been vigilant in withdrawing the same and should have approached this Court with promptitude, but kept the matter pending for almost two years. In my view, the delay cannot be said to be attributed to only wrong legal advise, but to the appellant, thus, the aforementioned judgment would not come to the rescue of the appellant.

For the foregoing reasons, the appeal is dismissed on the ground of delay and as well as on merits as the same does not find maintainable.

November 10th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No