IN THE HIGH COURT OF PUNJAB &AT CHANDIGARH

CR No.650 of 2016 (O&M)
Date of Decision:17.11.2017

Market Committee Bhawanigarh. ...Petitioner

versus

Samira Singla & anr. ...Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. P.K.S. Gill, Advocate for the petitioner.

B.S.Walia, Judge.,

1. Prayer in this petition under Article 227 of the Constitution of India is for setting aside order dated 01.05.2015 i.e. Annexure P-2 passed by the learned Civil Judge (Jr. Div.) Sangrur vide which the application filed by the plaintiff-petitioner (hereinafter referred to as the petitioner) under Order 39 Rule 1 and 2 read with Section 151 CPC was dismissed as also order dated 23.10.2015 i.e. Annexure P-3 passed by the learned Additional District Judge (A.D.J.-III), Sangrur whereby the appeal filed against order Annexure P-2 was dismissed. Prayer is also for restraining respondent-defendant No.2 from selling, mortgaging or transferring any part of the property measuring 948.5 Sq. yards situated at Bhawanigarh bounded as : East : Street, West : Street, North : Street, South : Balwinder Singh.

2. Brief facts of the case leading to the filing of the revision petition are that respondent-defendant No.1 i.e. sole proprietor of firm M/s Karan Traders, Bhawanigarh is a licence holder u/s 10 of the Punjab Agricultural Produce Market's Act, 1961. Alleging that firm M/s Karan Traders was liable to pay market fee/RDF for the year 2009-2010, 2010-2011 and 2011-2012 under the provisions

of the Punjab Agricultural Produce Markets, Act, 1961, the petitioner initiated proceedings against the firm and on failure of respondent-defendant No. 1 to put in appearance despite number of opportunities, ex parte assessment order dated 25.03.2013 was passed on the basis of record, holding respondent-defendant No.1 liable to pay market fee of Rs.19,20,389/- penalty of Rs.1,92,03,890/- RDF of Rs.19, 20,389 besides interest thereon @ 18% pa.

3. That respondent-defendant No.1 did not pay the dues as per assessment and before the process could be initiated for recovery of the dues, respondent-defendant No. 1 with a view to defeat the rights of the petitioner, sold property measuring 948 Sq. Yards vide registered sale deed No.267 dated 08.05.2013 to respondent-defendant No.2.

4. That in order to protect its rights, the petitioner filed a suit praying for a declaration that sale deed No.267 dated 08.05.2013 executed by respondent-defendant No.1 in favour of respondent-defendant No.2 was the result of fraud and had been executed to defeat the interest of the petitioner qua the property as referred to above. While praying for grant of permanent injunction, application was also made under Order 39 Rule 1 and 2, r/w Section 151 CPC for the issuance of an ad interim injunction for restraining respondent-defendant No.2 from selling or transferring any part of aforesaid property.

5. Only respondent-defendant No.1 filed written statement in the suit while respondent-defendant No.2 did not put in appearance before either of the Court's below, therefore respondent-defendant No.2 was proceeded ex-parte. The application under Order 39 Rule 1 and 2 CPC was dismissed by the learned Civil Judge (Jr. Div.) Sangrur vide order dated 01.05.2015 i.e. Annexure P-2. Aggrieved, the petitioner filed an appeal but the same was dismissed by the

learned Additional District Judge Sangrur with cost's vide order dated 23.10.2015 i.e. Annexure P-3.

6. Learned counsel contended that the Courts below failed to take into account that assessment proceedings having attained finality, the petitioner had the legal right to recover the amount from respondent-defendant No.1 in terms of assessment dated 25.03.2013 by selling the property in question, that respondent-defendant No. 1 had no where stated in the written statement that she had any property to discharge the liability qua the assessment made, besides, she had sold the property on 08.05.2013, that she had not deposited the amount toward due's out of the amount received by selling the property in question which revealed beyond an iota of doubt that sale of the property was done to frustrate recovery of the assessed amount, that the Courts below had failed to take into account that the petitioner had the right to recover the amount under Section 41(2) of the Punjab Agriculture Produce Market's Act, 1961 as arrears of land revenue, therefore there was no need for filing recovery suit in a civil court, the Courts had also failed to take into account that if the petitioner succeeded later on it would suffer irreparable loss as there was no other source from where recovery could be effected except the property in question.

7. The learned Civil Judge (Jr. Div.) Sangrur dismissed the application under Order 39 Rule 1 & 2 CPC on the ground that prima facie case was not made out nor was balance of convenience in favour of the petitioner. Appeal filed against the order passed by the learned Civil Judge (Jr. Div.) Sangur was dismissed by the learned District Judge, Sangrur on the ground that the claim of the petitioner was qua the default committed by respondent-defendant No.1 whereas sale deed had been executed by respondent No.1 in favour of respondent No.2 and despite the

petitioner having remedy of recovery under the provisions of the Punjab Agricultural Produce Market's Act, 1961, no proceedings had been initiated thereunder, instead the petitioner had filed a civil suit for a declaration that the sale deed executed by respondent-defendant No.1 in favour of respondent-defendant No.2 was a fraud and had been executed to defeat the interest of the petitioner qua the property as detailed above, the petitioner had claimed a declaration whereas as evident from its pleadings, its right was of recovery, as such neither prima facie case nor balance of convenience was made out in favour of the petitioner nor would irreparable loss be caused to it if the interim injunction prayed for was declined.

8. I have considered the submission's made by learned counsel for the petitioner. At the very outset it needs mentioning that learned counsel for the petitioner fairly conceded that no proceeding had been initiated by the petitioner against respondent-defendant No.1 under Section 41(2) of the Punjab Agricultural Produce Market's Act, 1961. He further conceded that it was not the case of the petitioner in the civil suit that respondent-defendant No.2 had connived with respondent-defendant No.1 in the execution of sale deed No.267 dated 08.05.2013 with a view to deprive the petitioner of recovery of dues from respondent-defendant No.1. Case was adjourned to 14.10.2017 to verify averments made in the civil suit. Learned counsel by producing the plaint has referred to paragraph No. 4 of the same. The same is reproduced as under :-

> *"That defendant No.2 was having knowledge that defendant No.1 is liable to pay market fee, RDF and penalty has got executed the alleged sale deed No.267 dt. 8.5.2013, which is liable to be set aside being illegal and void and result of fraud played by the defendant No.1 to defeat the interest of the plaintiff as that he may not able to recover the amount as per assessment order dated 25.3.2013."*

9. A perusal of the extract of the plaint as referred to above reveals that the allegation against respondent-defendant No.2 therein is of his having knowledge that respondent-defendant No.1 was liable to pay market fee, RDF and penalty and that the sale deed was the result of fraud played by respondent-defendant No.1 to defeat the interest of the petitioner so that the petitioner may not be able to recover the amount as per assessment dated 25.03.2013. There is no allegation of connivance of respondent-defendant No.2 with respondent-defendant No.1 to defraud the petitioner of its right to recover the dues payable to it. Besides, the petitioner has a remedy under Section 41(2) of the Punjab Agricultural Produce Market's Act, 1961 of effecting recovery from respondent-defendant No.1 of the amount claimed as dues, as arrears of land revenue or through a Court of law. Admittedly proceedings for recovery of dues has not been initiated by the petitioner for reason's best known to it.

10. In the light of the position as noted above, the petitioner has failed to make out a prima facie case in its favour. The property in question was purchased by respondent-defendant No.2 from respondent-defendant No.1 for valuable consideration vide sale deed No.267 dated 08.05.2013. There is no allegation that respondent-defendant No.2 connived with respondent-defendant No.1 to deprive the petitioner of the right to recover the amount due to it from respondent-defendant No.1 on account of assessment order passed against it. No proceeding have been taken out by the petitioner for effecting recovery nor has any suit for recovery been filed against respondent-defendant No.1. Suit filed is merely for a declaration that the sale deed executed by respondent-defendant No.1 in favour of respondent-defendant No.2 is the result of fraud and has been executed by respondent-defendant No.1 to defeat the interest of the petitioner. In

the circumstances, no fault can be found with the denial of interim injunction. Accordingly finding no merit in the revision petition, the same is dismissed. However nothing said in this order shall be taken as an expression on merit qua the right's of the parties and the same would be subject to the outcome of the civil suit.

November 17, 2017 **(B.S. WALIA)**
ps **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No