

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

ESA No.43 of 2017(O&M)

Date of Decision:-15.11.2017

Om Parkash Maan & Anr.

.....Appellants.

Versus

Balwan Singh Gahlawat & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Keshav Pratap Singh, Advocate for the Appellants.

Mr. Kanwal Goyal, Advocate &
Ms. Khyati Goyal, Advocate for the respondent no.1.

None for respondent nos.4 & 7 to 10.

Service upon respondent nos.2,3,5 & 6 stands dispensed
with vide order dated 31.10.2017.

JASWANT SINGH, J.

Objectors-appellants are in appeal aggrieved against the concurrent findings returned by the Courts below, whereby their objection petition filed under Order 21 Rule 97 to 105 of the CPC have been dismissed by Civil Judge(Sr. Divn.), Rohtak vide judgment dated 28.11.2016 and the findings thereof have been affirmed by additional district judge Rohtak vide judgment dated 5.8.2017.

Learned Counsel for the appellant has vehemently argued that the predecessor in interest of the appellant namely, Smt. Sarupi was a bonafide purchaser. To substantiate the said plea it is submitted that Smt.

Sarupi had purchased the property in dispute from Capt. Ganpat (Judgment Debtor No.1-owner) in the light of the statement made by the decree holder Balwan Singh Gehlawat on 12.7.1989 in the redemption of mortgage proceedings initiated by Capt. Ganpat through the power of attorney holder Balwan Singh Gehlawat (plaintiff) against the tenants-sons of Smt. Sarupi, to the effect that there was no agreement of sale (i.e. 12.4.1989) between Balwan Singh and Capt Ganpat, which ultimately was the basis for filing Civil Suit no.1257 dated 1.8.1996 for specific performance by plaintiff Balwan Singh against Capt. Ganpat and others. Thus, it is argued that the conduct of the decree holder-respondent no.1, by denying the agreement itself shows malafides on his part and, therefore, Sarupi was not in knowledge about the agreement. It is also argued that the appellants have become the owners in possession of the property in question on the basis of registered Will dated 01.08.2012 executed by Smt. Sarupi (their aunt-Bua) in their favour and consequently, after her death they have entered into the possession of disputed land as owners, which fact is evident from the *jamabandi* as well as *Khasra Girdawaries* that stand in their name. Thus, it is argued that the appellants are entitled to protect their possession over the suit property, being a third party and, therefore, it is was incumbent upon the courts below to adjudicate the rights of the appellants separately, by framing of issues and granting an opportunity to lead evidence.

On the other hand learned Counsel for the respondent no.1 has argued that the Objections filed by appellants/objectors are not maintainable in view of Order 21 Rule 102 CPC because admittedly, Smt. Sarupi had bought the property from the judgment debtor Ganpat vide sale deeds dated 11.12.2000 and 20.11.2002 (i.e. During the pendency of the suit) and thus,

being a transferee *pendentelite*, the appellants have no right to file third party objections as their sale is hit by principles of *lis pendens*. It is further argued that the appellants, in any case, cannot be termed as bonafide purchaser because Smt. Sarupi is none else but mother of defendants no.2 to 5/JDs and not only this, appellant no.1 Om Parkash Mann had appeared in the witness box in the main suit as DW-7, while supporting the case of defendants. Thus, it has been prayed that the present appeal is without any merit and same may be dismissed.

After hearing learned Counsel for the parties and perusing the paper book with their able assistance, this Court is of the considered view that the present appeal is devoid of any merit and deserves to be dismissed.

Some of the undisputed facts in the present case are that on 12.04.1989 an agreement to sell was executed between Ganpat (owner) and Balwan Singh for a total land measuring 172 Kanals. On 09.06.1990 Ganpat executed sale deed of 52 Kanals out of land measuring 172 Kanals. It is also undisputed that on 24.05.1990, a fresh agreement to sell was executed between Ganpat and Balwan Singh regarding the remaining land i.e. 120 Kanals. As per the said agreement, sale deed was to be executed after the land was redeemed from Om Narain son of Hari Singh and his three other brothers(sons of Smt. Sarupi). Since, the deal fell through, therefore, Balwan filed a suit for specific performance on 01.08.1996 impleading Capt. Ganpat and Om Narain, Shiv Narain, Ajit Singh, Prem Singh sons of Hari Singh & Smt. Sarupi . The said suit was partly decreed by the trial Court vide judgment and decree dated 01.04.2006 (A-1) however, on an appeal filed by plaintiff-Balwan, the findings were reversed by the Appellate Court vide judgment and decree dated 4.6.2011. The said

findings have been affirmed upto to the Hon'ble Supreme Court as is evident from orders Annexure A-3 (Colly) to A-4. As per the said judgments, the agreement to sell dated 12.4.1989 stood rescinded and fresh agreement dated 24.5.1990 was held to be valid. It is not in dispute that Om Narain and others had contested the suit tooth and nail but could not succeed. However, in the entire litigation, it was never disclosed that their mother Sarupi Devi had bought the property from Ganpat vide sale deeds dated 11.12.2000 and 20.11.2002.

It emanates from the record that the defendants, at the time of leading their evidence had examined Om Parkash Mann-appellant no.1 as DW-7, who was cross examined at Length on 08.05.2003. At that time, Om Parkash had projected that a compromise has been struck between Ganpat and Om Narain etc. whereby, Ganpat has agreed to sell off the property to Om Narain etc. vide receipt Ex.D-2 and in pursuance thereof, one lac rupees has been paid as earnest money. At no point of time, it was projected that Ganpat is no longer the owner of the property.

Thus, from the aforementioned facts it is abundantly clear that the appellants or their predecessor in interest cannot be termed to be bonafide purchasers. It is settled position of law that in case a party purchases property during the pendency of the suit then, the said sale is hit by principles of *lis pendens* and, therefore, he cannot be held to be a bonafide purchaser. The reason for the same is that judicial proceedings are considered to be known to all, being in public forum and thus, the plea of bonafide purchaser falls flat in front of principle of *lis pendens*. It was in this situation that the legislature, in its wisdom, had incorporated Order 21 Rule 102 CPC, which specifically bars a transferee pendente lite to file third

party objections for obstructing the execution of a decree.

In any case, the argument of learned Counsel for the appellant, by pointing towards the conduct of decree holder-Balwan Singh is of no consequence in view of the following facts:-

1. *In the main suit filed for specific performance, a specific issue no.2 was framed as to whether agreement dated 12.04.1989 stood rescinded/cancelled. The said issue was decided in favour of the decree holder-Balwan Singh and specific performance was granted on the basis of agreement to sell dated 24.5.1990. Meaning thereby, statement of decree holder in July, 1987 that there is no contract dated 12.4.1989 is of no use to the appellants.*

2. *Smt. Sarupi is none else but mother of defendant no.2 to 5, who had contested the suit against the decree holder. It is completely unbelievable that Smt. Sarupi Devi was not aware about the litigation pending amongst the parties for the land in question.*

3. *Appellants herein are claiming on the basis of registered Will executed by their aunt (Bua), namely, Smt. Sarupi dated 01.08.2012 by averring that they were taking care of their aunt (Bua), as she did not have good relations with her sons as well as her husband Hari Singh. However, appellant no.1 Om Parkash Maan appeared in the witness box as DW-7 and, therefore, he was in the knowledge of the litigation and thus, could have informed his aunt (Bua) about the pendency of litigation.*

4. *The appellants claim that sons of Hari Singh i.e. Om Narain etc., never gave up their possession to Ganpat, despite long drawn litigation because of which the decree holder Balwan was also constrained to sell off 52 Kanals of land bought by him on 09.06.1990 from Ganpat vide sale deed executed by Balwan somewhere in the year 2002. In such situation, it is highly unbelievable that after death of Sarupi Devi, Om Narain etc. gave up their possession to appellants*

without any litigation or fight. This fact itself shows the collusiveness between Om Narain etc., on one hand and appellants on the other hand, who are the maternal cousins of Om Narain etc-the judgment debtors.

From the above facts it becomes clear that it is infact the conduct of the appellants which requires to be deprecated and not the decree holder, who has been fighting litigation for the past more than 21 years to get the property.

It is true that the Executing Court, while adjudicating claims under Order 21 Rule 97 to 105 CPC must go into the question of an independent claim raised by a third party, however, it is not necessary for the Court to frame issue and take in evidence in every case where it is found that the objections raised are frivolous. The said objections are required to be thrown out at the first instance itself. Thus, the courts below have rightly not framed any issue and permitted the parties to lead evidence in view of the glaring facts and circumstances of the case observed above.

In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

November 15, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>