

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.2069 of 2012 (O&M) and
other connected cases.**

Date of Order:06th December,2017

Avtar Singh

...Appellant

Versus

Indian Sulphacid Industries Ltd.

...Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

**Present: Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate,
for the appellant (In RSA No.2069 of 2012)
for the respondent (in RSA No.3601 of 2015)**

**Mr. Vinod Kumar, Advocate, fo
Mr. Paramjit Singh Saini, Advocate,
for the appellant (in RSA No.3350 of 2012)**

**Mr. Anil Chawla, Advocate,
for the appellant (in RSA No.2942 of 2013)**

**Mr. Baldev Raj Mahajan, Sr. Advocate with
Mr. Prateek Mahajan, Advocate and
Ms. Tanika Goyal, Advocate and
Mr. Saurabh Mago, Advocate,
for the Indian Sulphacid Industries Ltd.
(in all cases)**

**Mr. G.S.Bhandal, Advocate,
for respondent no.2 (in RSA No.3346 of 2012)**

**Mr. Tushar Sharma, Advocate,
for respondent(s) (in RSA No.2988 of 2012)**

**Mr. Gursher Singh, Advocate,
for respondent no.2(in RSA No.3346 of 2012)**

Mr. K.S.Rekhi, Advocate,

**Mr. B.M.Vinayak, Advocate,
for the respondents (in RSA No.3551 of 2015)**

ANIL KSHETARPAL, J.

C.M.No.8807-C-2012 in RSA No.3308 of 2012

C.M.No.8963-C-2012 in RSA No.3346 of 2012

C.M.No.5751-C-2012 in RSA No.2070 of 2012

C.M.No.5753-C-2012 in RSA No.2071 of 2012

C.M.No.5755-C-2012 in RSA No.2072 of 2012

C.M.No.5757-C-2012 in RSA No.2073 of 2012

C.M.No.5759-C-2012 in RSA No.2074 of 2012
C.M.No.5761-C-2012 in RSA No.2075 of 2012
C.M.No.5972-C-2012 in RSA No.2150 of 2012
C.M.No.6137-C-2012 in RSA No.2196 of 2012
C.M.No.7383-C-2012 in RSA No.2734 of 2012
C.M.No.7385-C-2012 in RSA No.2735 of 2012 &
C.M.No.7820-C-2013 in RSA No.2942 of 2012

Prayers in these applications are for permission to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure to produce copy of judgments and decrees passed by the learned first appellate Court.

These judgments and decrees are subject matter of the appeals in this bunch of appeals being decided by common judgment.

Applications are allowed, the judgments and decrees passed by the learned first appellate Court are allowed to be lead in additional evidence.

Counsel for the respondent-company has waived his right to lead any rebuttal evidence.

MAIN CASE

By this common judgment, these 34 appeals are being disposed of as common question of law and almost similar facts are involved.

In the considered opinion of this Court, following questions of law arise for determination:-

- (i) Whether on conversion of a Joint Hindu Family business into a limited company, the assets of the business of Joint Hindu Family vest in the company in terms of Section 263 of the Indian Companies Act, 1913?
- (ii) Whether the owner of the property is required to get the sale deed executed by the persons who are not the

owners, set aside before seeking possession of the property or the owner can just ignore the sale deed being void ab-initio and nullity?

FACTS

A Joint Hindu Family Shambhu Nath Kapoor and Sons was running a industry on a land measuring 29690 Sq. Yads comprised in various khasra numbers given in the plaint. The Joint Hindu Family decided to convert the joint family business into a limited company and for that purpose, Shambhu Nath and Sons Private Limited was got incorporated under the Indian Companies Act, 1913 on 02.03.1933. Vide resolution dated 01.04.1933, the family members appointed Directors and decided that the entire family business including properties shall vest with the company got incorporated.

Two mortgage deeds were executed, one in the year 1956 and the other in the year 1960 in favour of Punjab Financial Corporation for getting the loan. In these mortgage deeds, it was specifically recorded that the properties of the erstwhile Joint Hindu Family vests with the plaintiff company got incorporated and the members of the erstwhile Joint Hindu Family have no further right, title or interest in the property.

It is asserted by the plaintiff that the loan raised from the Punjab Financial Corporation was re-paid and the mortgages were redeemed.

There was some dispute between the members of the Joint Hindu Family and the company changed hands on account of sale of the shares. The company i.e. Shambhu Nath and Sons Private Limited (subsequently the company was incorporated as a Public Limited Co.), filed a suit for permanent injunction restraining the defendants from interfering in their

possession on 17.01.1978. In the suit, various family members of the erstwhile Joint Hindu Family were impleaded as defendants.

The aforesaid suit was decreed vide judgment and decree dated 16.04.1979 and defendants were restrained from interfering with the possession of the company i.e. Shambhu Nath and Sons Private Limited of the factory premises consisting of the land measuring 29690 Sq. Yds. and from transferring the property in any manner whatsoever.

However, it appears that due to bad law and order situation on account of terrorism in the State of Punjab, the Civil Court decree was violated forcing the company to file two suits, one for injunction on 16.03.1982 and other for recovery of Rs.8 lacs as damages on account of wrongful demolition of the building and machinery of the plaintiff company. Both the suit were consolidated. In this suit also, family members of the erstwhile Joint Hindu Family Shambhu Nath Kapoor and Sons were party defendants. The suit filed for recovery of damages was decreed and it was found that the building and machinery of the company has been wrongly and illegally demolished by the defendants and, therefore, the company is entitled to decree of Rs.7,85,000/-. However, the suit for injunction was dismissed as infructuous after noticing that the building has already been demolished and the compensation has been awarded. The judgment and decree passed by the Civil Court on 19.08.1994 is part of the trial court record.

There was dispute with regard to possession and on a report made, proceedings under Section 145 of the Code of Criminal Procedure were initiated by presenting a calendra on 20.08.1981. These proceedings culminated into an order passed by the Sub Divisional Magistrate , wherein

it was held that it is the plaintiff company, which was in possession immediately before the filing of the calendra and Diwan Chand Kapoor had sold some part of the property.

Since the building was demolished and the machinery was damaged and various persons entered into an unauthorised possession forcing the company to file fresh suits for possession. Large number of suits were filed which have been separately decided by the Courts, however, these appeals have come up for hearing together.

On the other hand, defendants in the written statement have pleaded that they are bonafide purchasers of the property from the family members of Joint Hindu Family Shambhu Nath Kapoor and Sons. Some of the defendants are even subsequent purchasers and have constructed their houses. It was pleaded that in the revenue record, Joint Hindu Family HUF is being recorded as owner and they have purchased the property for consideration.

Learned trial Court after appreciating the evidence available on record, dismissed all the suits. However, in the first appeal, learned first appellate Court decreed most of the suits filed by the plaintiff-company except six cases. The learned first appellate Court has while accepting the appeal filed by the company has held that the Joint Hindu Family had converted itself into a limited company in the year 1933 and, therefore, the land measuring 29690 Sq. Yds. on which factory building had been constructed vested with the plaintiff company. The learned first appellate Court further noticed that shares in the company were sold and even the name of the company was changed in the year 1979 to Indian Sulphacid Industries Ltd. The learned first appellate Court further held that in view of

various judgments and decrees and orders passed by the Courts and authorities, defendants cannot claim themselves to be bonafide purchasers and the alleged sales in their favour were void ab-initio being nullity. However, in six first appeals filed by the company, the judgment of the trial court was upheld.

Now the stage is set for considering the questions of law framed earlier.

Question No.(i)

Whether on conversion of a Joint Hindu Family business into a limited company, the assets of the business of Joint Hindu Family vest in the company in terms of Section 263 of the Indian Companies Act, 1913?

It is not in dispute that Shambhu Nath Kapoor and Sons, HUF, had converted itself into a Limited Company by incorporating Shambhu Nath and Sons Private Limited on 02.03.1933. On 01.04.1933, a resolution was passed by the Company, relevant part is extracted as under:-

“Resolved that the going concern of Messrs Shambhu Nath & Sons, as well as their property, assets and liabilities as on the 31st March 1933 and detailed overleaf, be acquired, in terms of Clause 3(a) of the memorandum of Association.

It is further not in dispute that land, building and machinery of the company set up on 29690 Sq. Yds. land was mortgaged with Punjab Financial Corporation, through mortgage deed dated 28.05.1956. The mortgage deed was executed by the plaintiff company, smaller HUFs, partnership firm and members of the erstwhile Joint Hindu Family. It was duly acknowledged in the mortgage deed that the land, building and

machinery of the company is owned by plaintiff-company. In 1960, another mortgage deed was executed for getting further financial assistance and in that mortgage deed also it was admitted that the plaintiff company is the owner of the property in dispute.

It is admitted position on the record that Sections 54, 107 and 123 of the Transfer of Property Act, 1887 were extended to the State of Punjab with effect from 01.04.1955, whereas Section 59 was extended to the State of Punjab on 06.06.1968.

Section 263 of the Indian Companies Act, 1913 reads as under:-

“263. All property, movable and immovable, including all interests and rights in, to and out of property, movable and immovable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.”

It is apparent from the reading of the aforesaid provision that on incorporation, all the properties, movable or immovable including interests and rights in movable and immovable property, shall vest in the newly incorporated company. Section 263 of the Indian Companies Act has been interpreted by the Division Bench of the Andhra Pradesh High Court in the judgment reported as **Vali Pattabhirama Rao and another v. Sri Ramanuja Ginning and Rice Factor(P.) Ltd., and others, AIR 984 Andhra Pradesh 176.** In this case, the partnership firm, converted itself into a limited company and the Division Bench after interpreting Section 263 of the

Indian Companies Act, 1913, held that the word “company” used in the provision would include partnership firms also. It shall be useful to reproduce paragraph 18 of the judgment of the Division Bench of the Andhra Pradesh High Court (supra) for facility of reference:-

18. We have already held that the partnership firm in which the original lessee is partner was legally constituted, and the firm continues to be lawful and the properties belonging to all the partners have become the properties of the firm. The question is whether the property of the said firm had vested in the first defendant company when the firm was registered under the provisions of the [Indian Companies Act, 1913](#). For that it is necessary to notice the terms of [section 263](#) of the Indian Companies Act, 1913, that corresponds to [section 575](#) of the present [Companies Act, 1956](#). [Section 263](#) reads as follows :

“S.263. All property, movable and immovable, including all interests and rights in, to and out of the property, movable and immovable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.”

The word "company" occurring in [section 263](#) is not a company registered under the Act. It is used in the sense of a group, assembly or association of persons. In fact, throughout the Act the word "company" was used in several sections in the general sense of association of persons. In fact, [section 11](#) of the present [Companies Act](#) ([section 4](#) of the previous Act) itself which enacted the prohibition of associations exceeding a certain members for carrying on trade starts with saying that no company or association or

partnership consisting of more than ten members shall be formed. [Section 253](#) of the previous Act corresponds to [section 565](#) of the present Act. [Section 565\(1\) \(b\)](#) of the present Act corresponds to [section 253\(1\) \(ii\)](#) of the 1913 Act, which permits any company otherwise duly constituted according to law consisting of seven or more members to be registered as a company. A partnership must be one such. This is made clear by the provisions of [section 255](#) of the 1913 Act (present Act [section 567](#)) and [section 256](#) of the 1913 Act (present Act [section 568](#)) where under a deed of partnership has to be filed before the Registrar before seeking the registration. Hence, a partnership which was treated as a company for the purposes of the [Companies Act](#) can be registered under Part 8 of the previous Act (Part 9 of the present Act) and the vesting is provided by [section 263](#) of the 1913 Act ([section 575](#) of the present Act). The provision is mandatory and there will be statutory vesting in the corporation so incorporated under the provisions of the [Companies Act](#). The Registrar is bound to give a certificate of registration under [section 262](#) (present [section 574](#)) which is a conclusive proof of incorporation, vide [section 35](#) of the present Act that corresponds to [section 24](#) of the previous Act. Hence, it is clear that no conveyance is necessary when a partnership is converted and registered as a company. However, it is not possible to acquire such title statutorily under this section if the previous firm purports to convey title to the company in which event a separate deed of conveyance is necessary. Thus, we hold that if the constitution of the partnership firm is changed into that of a company by registering it under Part 9 of the present Act (Part 8 of the previous Act), there shall be statutory vesting of title of all the

property of the previous firm in the newly incorporated company without any need for a separate conveyance. A similar view was taken in [Ramasundari Ray v. Syamendra Lal Ray](#), ILR [1947] 2 Cal 1. D.W. 2 deposed that in 1920 the partnership was converted into a private limited company and filed the articles of association, exhibit B-54. This evidence stood uncontradicted. In fact, the plaintiffs and their predecessors-in-title treated the first defendant as successor-in-interest of the previous firm and hence we are of the opinion that the leasehold interest that has become firm's property by virtue of the original lessee bringing into the firm has vested in the first defendant company after its registration.”

This judgment was cited with approval by the Hon'ble Supreme Court of India in the case reported as **Jai Narain Parasrampuria (Dead) and others v. Pushpa Devi Saraf and others, (2006) 7 Supreme Court Cases 756.**

Although, this was a case where after applying for incorporation of the company, promoters purchased certain properties in their individual names for the company newly sought to be incorporated and the Court after considering provisions of the Companies Act, 1956, held that such property shall vest in the company, although, it was purchased in the names of the promoters.

Still further, the property in dispute was always treated to be the property of the company since 01.04.1933. The mortgage deeds executed in the year 1956 and 1960 clearly acknowledges this fact.

In view of the discussion made above, questions no.(i) is answered in favour of the plaintiff-company.

Question No.(ii)

Whether the owner of the property is required to get the sale deed executed by the persons who are not the owners, set aside before seeking possession of the property or the owner can just ignore the sale deed being void ab-initio and nullity.

It is not disputed that a decree for permanent injunction was passed in the year 1979 against the erstwhile members of the Joint Hindu Family i.e. Shambhu Nath Kapoor and Sons directing them neither to interfere in the possession of the company nor alienate the property in any manner whatsoever. It is further not in dispute that the forcible possession of the properties of the plaintiff company were taken over including the land in dispute forcing the company to file two suits, one for injunction on 6.03.1982 and another for recovery of damages. The suit for recovery of damages was decreed, whereas suit for injunction was ultimately dismissed as infructuous after noticing that the factory building has already been demolished.

However, during the pendency of the subsequent suits, erstwhile family members of the Joint Hindu Family sold the property to the defendants in various suits. All these sale deeds were after the decree passed by the Court on 16.04.1979, restraining the erstwhile members of the Joint Hindu Family neither to interfere in the possession of the company nor to transfer the property the plaintiff company in any manner. But due to terrorism, the law and order situation in the State of Punjab was bad and the plaintiff company could not protect its building and machinery, although, there was a civil Court decree in its favour.

In view of the answer to question no.(i), the plaintiff-company has been held to be owner of the property, therefore, the sale deeds executed by

the member of the erstwhile Joint Hindu Family would not enure to the benefit of defendants as the members of the erstwhile Joint Hindu Family were not the owners of the property on the day all the sale deeds were executed. Sale deeds were also executed in violation of the decree passed by the Court on 16.04.1979. It is well settled that no one can transfer better title than what he has.

Although, learned counsel for the defendants has submitted that the suit filed by the plaintiffs was barred by limitation as the plaintiffs were required to file a suit within a period of three years from the date, the sale deeds were executed in favour of the defendants. However, in the considered opinion of this Court, such sales were void ab-initio and nullity and hence liable to be ignored.

Learned counsel for the defendants has referred to Article 59 of the Limitation Act to contend that the suit for declaration could only be filed within a period of three years.

However, in the considered opinion of this Court, Article 59 of the Limitation Act would have no application in a case where no declaration is being sought for. The present suit would be governed by Article 65 of the Limitation Act, 1963 being suit for possession by an owner who is claiming possession. In this regard reliance can be placed on the judgment passed by the Hon'ble Supreme Court of India in the case reported as **State of Maharashtra v. Pravin Jethala Kamdar (Dead) by LRS., (2000)3 Supreme Court Cases 460.** Hon'ble Supreme Court has held that if the subsequent sale deed was nullity, plaintiff was not required to seek declaration about its invalidation and the suit for possession is maintainable. Hon'ble Supreme Court has further relied upon its previous judgment

reported as *Ajudh Raj v. Moti, (1991) 3 SCC 136.*

In view of the discussion made above, the second question of law framed is also answered in favour of the plaintiff-company.

Learned counsels for the defendants have also submitted that defendants are bonafide purchasers of the property. They have further submitted that the land is now a part of a Town Planning Scheme which is for residential purposes. They have further submitted that in the revenue record, the Joint Hindu Family Firm Shambhu Nath Kapoor and Sons is recorded as an owner. They have further submitted that the judgments passed by the Civil Courts on 16.04.1979 and the judgment passed on 19.08.1994, cannot bind the defendants as they were not parties.

In the considered opinion of this Court, defendants cannot claim themselves to be bonafide purchasers as all the sale deeds are after decree dated 16.04.1979. It is further not in dispute that all the sale deeds have been executed during the pendency of the suit for injunction, which was instituted on 16.03.982 by the plaintiff company. Plaintiff has asserted that it has given public notices in the various news papers, warning the general public not to purchase any property from the family members of the erstwhile Joint Hindu Family as they are not the owners. Of course, those public notices published in the news papers have not been proved on the file. However there was a judgment and decree passed by a competent Court. Still further all the sale deeds are hit by the rule of lis pendence, hence defendants cannot claim themselves to be bonafide purchasers.

As regard argument that the land in question is now a part of the Town Planning Scheme reserved for public purpose, it is sufficient to notice that the land belongs to the plaintiff-company. Defendants have no right,

title or interest in the property. Therefore, even if in the Town Planning Scheme, the land is being assigned for the residential purposes, the owner plaintiff-company shall be entitled to use the land. However, defendants cannot derive any benefit out of the scheme.

Next argument of learned counsel is that the defendants are not party to the judgments dated 6.04.1979 and 19.8.1994. However, it is not in dispute that predecessor-in-interest of the defendants were party-defendant in the aforesaid suits. Defendants are claiming that they are deriving their title from various family members of the Joint Hindu Family Shambhu Nath Kapoor and Sons. Once they were party-defendants in the aforesaid suits, the judgments passed by the Court are binding on the defendants.

Learned counsel for one of the defendant has submitted that even if Transfer of Property Act was not applicable, at least Registration Act, 1918 was very much applicable, hence also no transfer of title could take place in favour of plaintiff company.

However, the argument is without any substance in view of the fact that by the operation of Section 263 of the Companies Act, 1913, on Joint Hindu Family business being converted into and registered as a company, the business of the Joint Hindu Family was vested in the plaintiff company.

Still further, Section 17 of the Registration Act would apply only if there is a transfer deed. In this case, there was no document executed by Joint Hindu Family in favour of the plaintiff company, which required registration.

In view of the discussion made above, the appeals filed by the plaintiff-company i.e. RSA Nos. 3308, 3346 of 2012, 3551, 3552, 3601,

3716 of 2015, are allowed, whereas remaining appeals filed by the defendants-appellants are dismissed.

C.M.No.5879-C-2014

Prayer in this application is for directing the appellants to deposit mesne profit for use and occupation of the suit property.

In view of the judgment passed by this Court, the present application has become infructuous. Hence disposed of as such.

NOTE:- All the other miscellaneous applications shall stand disposed of in terms of the judgment passed above.

06th December, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO