

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2114 of 2015
Date of Decision:6.9.2017**

Ramesh Kumar

...Appellant

Versus

Chander Bhan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Surinder Garg, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant regular second appeal, at the hands of unsuccessful plaintiff, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration was dismissed by the learned trial court, vide its impugned judgment and decree dated 12.5.2012 and his first appeal also came to be dismissed by the learned District Judge, vide impugned judgment and decree dated 16.12.2014, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in paras 2 of the impugned judgment, are that initially, plaintiff Ramesh Kumar, filed a suit for declaration, thereby asserting himself, to be owner in possession of residential house, built on land measuring 125.66 square yards i.e 16/720 share of land bearing Khewat No. 552, Khatauni No. 883, khasra number 11904/7572 (9-0), situated in Agwar Waneka, Faridkot and bounded as detailed in the head note of the plaint, on the basis of sale deed dated 31.08.2007 and mutation No. 5369, sanctioned on 27.09.2007

and also sought further declaration to challenge the legality and validity of the attachment, auction/sale and confirmation of sale, in execution application No. 24/09.03.2007, titled as “ Chander Bhan Vs. Surat @ Suraj' and that said attachment, sale and confirmation of sale had no effect upon the rights and title of the plaintiff.

It was averred in the plaint that the plaintiff purchased the suit property, as detailed in the head note of the plaint, vide sale deed dated 31.08.2007. The plaintiff got the same executed and registered, after satisfying and verifying the title and sale-able rights of defendant No.2, over the suit property from all available sources. At the time of execution and registration of the sale deed dated 31.08.2007, defendant No.2 also handed over possession of the suit property to the plaintiff, along with original sale deed dated 28.02.2000, Municipal Committee sanctioned map of the suit property, receipts showing payment made to the Municipal Committee, Faridkot for getting the map sanctioned and receipts of taking connection of electricity in the suit property. The plaintiff came to know about attachment of the suit property, when he obtained jamabandi for the year 2004-05 and then, the plaintiff approached his counsel Shri Inder Pal, Advocate, who after inspection of the file, revealed to the plaintiff that the suit property had been attached in execution of a decree in case, titled as 'Chander Bhan Vs. Suraj', decided by Shri Sat Pal, the then learned Additional Civil Judge (Senior Division), Faridkot on 6.1.2007 and had been further put to auction on 09.12.2008 by the Tehsildar, Faridkot, vide order dated 16.10.2008, passed by Smt Rajwinder Kaur, the then learned Additional Civil Judge (Senior Division), Faridkot. The sale was confirmed on 2.5.2009 by Shri D.P. Singla, the then learned Additional Civil Judge (Senior Division),

Faridkot, even though, decree holder/defendant No.1 did not deposit the full sale amount. Further, it was averred that defendant No.2 Surat alias Suraj had no sale-able right, at the time of attachment, sale and confirmation of sale of the suit property, as he had already sold the suit property to the plaintiff, vide sale deed dated 31.8.2007. As such, attachment, sale conducted by the Tehsildar and confirmation of sale, as detailed aforesaid, were null and void, illegal and against the natural justice, having been got passed by the plaintiff/decrece holder, now defendant No.1 Chander Bhan by misrepresenting, misleading and keeping in dark by producing old jamabandi of the suit property, as detailed in the head note of the plaint and that the property being attached was a residential house, which was required, to be attached by the Bailiff of the Court and sold in open auction by the Court Auctioneer, instead of revenue official and the property had already been sold to the plaintiff, before attachment of the same and further by not depositing the full sale amount in the Court, before confirmation of the sale. Also further, it was averred that the suit property was purchased by the decree holder, now defendant No.1 himself, after taking permission from the Court, as no one came forward to purchase the same. The attachment of the suit property and then, its sale and confirmation of the sale, as stated aforesaid, had no effect on the rights and title of the plaintiff, over the suit property, as defendant No.2 had sale-able right, at the time of attachment and sale of the same, in view of the sale deed dated 31.8.2007. The plaintiff had been requesting the defendants to admit the clear rights and title to the plaintiff, over the suit property, but to no effect and the same necessitated the filing of the suit.

Having been put to notice, defendant No.2 did not appear,

despite service and was proceeded against ex parte by the learned trial Court. Defendant No.1 appeared and filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether plaintiff is entitled for declaration, as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the suit is time barred?OPD
4. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case for want of cogent and sufficient evidence. Accordingly, his suit for declaration, claiming ownership on the basis of sale-deed No.2326 dated 31.8.2007 qua the suit property was dismissed, vide impugned judgment and decree dated 12.5.2012. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 16.12.2014. Hence this second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant

It is a matter of record that plaintiff-appellant purchased the suit property from defendant No.2-Surat @ Suraj, during the pendency of execution application, at the hands of earlier decree holder-defendant No.1 namely Chander Bhan. It is also not in dispute that defendant No.1-Chander

Bhan filed a suit for possession by way of specific performance of agreement to sell against defendant No.2-Surat @ Suraj and the learned court of competent jurisdiction decreed his suit, however, granting alternative relief of recovery of earnest money along with interest. Said judgment and decree have been proved on record as Ex.P1 and Ex.P2, respectively. Suit of defendant No.1 Chander Bhan was decreed on 6.1.2007. When execution of this decree dated 6.1.2007 was pending at the hands of defendant No.1-Chander Bhan against defendant No.2-Surat @ Suraj, which was filed on 9.3.2007, plaintiff-appellant purchased the suit property from defendant No.2, vide sale-deed dated 31.8.2007. Thus, it becomes crystal clear that defendant No.2 was not competent to suffer the sale-deed dated 31.8.2007 in favour of the plaintiff. Having said that, this Court feels no hesitation to conclude that both the learned courts were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that in the circumstances of the case noticed hereinabove, plaintiff-appellant stepped into the shoes of his vendor. Since the plaintiff-appellant purchased the suit property during the pendency of the earlier litigation, rule of lis pendens would be attracted against the appellant. Earlier decree holder defendant No.1-Chander Bhan cannot be made to suffer for the fault of defendant No.2 and plaintiff-appellant. It is so said because decree dated 6.1.2007 had attained finality in favour of defendant No.1 and it was said decree which was being sought to be executed by him against defendant No.2. In such a situation, when litigation regarding the suit land was going on between both the defendants, plaintiff-appellant ought to have been more careful so as to ascertain that

the suit property was free from all encumbrances. However, he failed to do so and he violated the principle of caveat emptor. In such a situation, it was only the plaintiff-appellant, who was bound to fail in the instant litigation initiated by him. Under these facts and circumstances of case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“So far as execution of the sale deed dated 31.8.2007 is concerned, the same stands amply established, from the testimony of plaintiff himself as well as testimonies of Resham Singh, Deed Writer PW2, Shinder Pal PW3, who appeared, at the behest of the plaintiff, at the time of execution of the said sale deed and PW6 Rattan Lal, who is one of the attesting witnesses of the sale deed dated 31.8.2007. Even, from the evidence, it stands amply established that the suit property was earlier purchased by Surat alias Suraj, from Sukhdev Singh and same stands amply established from the testimony of Vinod Kumar Manchanda PW5, who had scribed the sale deed dated 28.2.2000. Also, Sukhdev Singh seller has stepped into witness box as PW8 and he has also deposed about execution of the sale deed dated 28.2.2000. From the evidence, it also stands established that defendant No.1 Chander Bhan had entered into agreement to sell dated 17.11.2005 with Surat alias Suraj, qua the suit property and on failure of Surat alias Suraj to get

sale deed executed, as agreed, he (Chander Bhan) had filed a suit for and specific performance of the agreement to sell on 4.8.2006, which was decreed, vide judgment and decree dated 6.1.2007, copy whereof, is Ex.P9 and decree sheet is Ex.P10 vide said judgment and decree, suit of the plaintiff was decreed for alternative relief of recovery. Also, from the evidence, adduced, it stands amply established that execution application was filed by Chander Bhan against Surat alias Suraj to seek recovery of the decretal amount. Also, it stands established that Surat alias Suraj had made appearance in the execution application and had filed an objection petition, which was decided by the Court on 22.10.2011, copy whereof, has been proved as Ex.D2. Thereafter, he was proceeded against ex-parte and thereafter, attachment was effected and auction was conducted and then, sale was also confirmed and sale certificate was ordered to be issued, vide order dated 2.5.2009 and copy of order has been proved as Ex.P6. Thus, it stands amply established that Surat alias Suraj, who is defendant No.2, in the present case, was very much aware of the execution application. In fact, he had made appearance and only, at a later stage, he was proceeded ex-parte. It was during the pendency of execution application that the suit property was purchased by the plaintiff, vide sale deed dated 31.8.2007 and such being the position, the plaintiff stepped into shoes of Surat alias Suraj and thus, is a representative of defendant No.2 It is well settled that the persons, who purchase property pending litigation, step into shoes of their vendors and that being so, separate suit, to challenge the legality and validity of proceedings conducted vis-a-vis sale of the property, as such, is not maintainable, in the light of the provisions of Order XXI as well as Section 47 CPC. In the light of the same, the only remedy available with the transferee i.e. Plaintiff is to file objections in the execution application, if any, and no separate suit, as such, is maintainable, on behalf of subsequent vendor.

To so conclude, I rely upon 'Pritam Singh and others vs. Virsa Singh and others'. 1990 PLJ,71. Thus, the present suit, to challenge the legality and validity of attachment, sale and confirmation of sale, as such, is not maintainable. This question is required, to be adjudicated, by way of filing of an objection petition, before the Executing Court and not by way of filing of a suit. In the light of the aforesaid conclusion, it is not necessary to dilate, upon applicability of principle of lis pendens to the sale in question. As such, the suit is not maintainable, to seek such declaration. In view of the same, the suit, as such, being not maintainable, has rightly been dismissed by the learned Lower Court..."

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any

substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

6.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No