AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.1466 of 1999

1. Sita Ram Singh A/A 66 years S/o Kunwar Singh, R/o Village Domanpur, Tahsil Mungeli, District Bilaspur (CG)
2. Jagdish, aged about 42 years,
3. Ravi Kumar, aged about 39 years
4. Virendr Singh, aged about 33 years,
5. Vijendr Singh, aged about 32 years,

No.2 to 5 sons of Kunwar Singh, All cultivators, and residents of village Domanpur, District Bilaspur

---- Appellants

Versus

Ram Kishore, son of Gayaram Soni, aged about 58 years, resident of Domanpur, Tehsil Mungeli, District Bilaspur

---- Respondents

For Appellants	:	Mr.Arvind Shrivastava, Advocate
For Respondent	:	Mr.Avinash Choubey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

22/10/2018

1. The substantial question of law involved, formulated and to be answered by this Court in this defendants' second appeal is as under:-

> “Whether after parting with the interest valid and legal binding compromise could be entered into in view of Section 18 of the Evidence Act in the previous case and whether such compromise would bind the present appellants ?”

2. The imperative facts required for determination of above-stated

substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) Plaintiff-Ramkishore filed a civil suit for recovery of possession and monetary benefits against the defendants for suit land stating inter-alia that suit land is ancestral property of the plaintiff and his family. After death of plaintiff's father Gayaram, the dispute arose between the plaintiff, his brothers namely, Ram Murut, Ram Manohar & Ram Krishna and their mother-Bedin Bai. They mutually appointed panchas of their village as arbitrators in the year 1962, seven panchas delivered their award on 14.7.1973 and in that award, the suit property along with other properties fell in share of the plaintiff. However, being dissatisfied with the award, the plaintiff filed an application under Section 30 read with Section 33 of the Arbitration Act, 1940 (hereinafter called as “the Act of 1940”) for setting aside of the award, which is registered as Civil Suit No.6-A/73. During pendency of that application, compromise application dated 1.7.74 (Ex.P/9) was filed by the parties before the Court of District Judge, Bilaspur and ultimately, compromise decree was passed on 31.7.75 (Ex.P/3) and the suit property fell in share of the plaintiff, thereafter the plaintiff's mother-Bedin Bai filed Civil Revision No.412/1981 before the High Court of Madhya Pradesh questioning the compromise decree passed by the District Judge, Bilaspur. The High Court of Madhya

Pradesh dismissed that civil revision on 12.1.1982 (Ex.P/11). It was further pleaded that during pendency of the application under Section 30 read with Section 33 of the Act of 1940, the plaintiff's brother-Ram Murat sold the suit property in favour of defendants No.3 to 6 by registered sale deed dated 27.9.74 (Ex.D/2) despite the plaintiff's objection in the registration of sale deed and consequent mutation in the names of the defendants and thereafter, in the year 1975 the defendants dispossessed the plaintiff from the suit land and restrained him from cutting standing crops sown by the plaintiff on the suit land leading to filing of the instant suit claiming for reliefs mentioned hereinabove.

(2.2) The defendants, who are purchasers of the suit property, filed their joint written statement stating inter-alia that they have purchased the suit property on 27.2.1974 from plaintiff's brother-Ram Murat and since then, they are in possession of the suit property and compromise decree passed in Civil Suit No.6-A/73 is not binding on them as they were not party to it and claimed dismissal of suit.

(2.3) The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 24.4.84 decreed the suit holding that the suit property was subject-matter of arbitration award. In the proceeding initiated under Section 30 read with Section 33 of the Act of 1940, compromise decree has already been drawn between the parties and the suit property fell in share of the plaintiff and principle of *lis pendens* as enumerated under Section 52 of the Transfer of Property Act, 1882 (hereinafter called as “TP Act”) applies to the suit property and also negatived the plea of adverse possession set-forth by the defendants.

(2.4) In an appeal preferred by the appellants/defendants, which was confined to applicability of Section 52 of the TP Act, the First Appellate Court agreed the finding of the trial Court and dismissed the appeal.

(2.5) Being aggrieved and dissatisfied with the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.

3. Mr.Arvind Shrivastava, learned counsel for the appellants/defendants, would submit that both the Courts below are absolutely unjustified in granting decree in favour of the plaintiff ignoring the fact that the defendants are *bona fide* purchasers of the suit property on 27.2.74 and thereafter compromise could not have been entered into in view of Section 18 of the Indian Evidence Act, 1872, as such, compromise, if any, would not bind the defendants, who are *bona fide* purchasers of the suit property. He would further submit that earlier suit was collusive suit between the plaintiff and his brothers including Ram Murat, therefore, provisions contained in Section 52 of the TP Act are not applicable and as such, the impugned judgment and decree deserves to be set aside.

4. Mr.Avinash Choubey, learned counsel for the respondent/plaintiff, would submit that matter was referred by the plaintiff, his brothers and

mother-Bedin Bai to arbitrators for partition in the year 1962 and the arbitrators delivered their award on 14.7.73. The plaintiff filed an application under Section 30 read with Section 33 of the Act of 1940 for setting aside arbitration award before the District Judge, Bilaspur. During pendency of that application, his brother Ram Murat sold the suit property in favour of defendants No.3 to 6 in which the plaintiff has objected to the execution of sale deed and mutation of names of the defendants, as such, Section 52 of the TP Act is fully attracted. The First Appellate Court has rightly held that Section 52 of the TP Act is attracted, as such, the judgment and decree of the trial Court has rightly been upheld by the First Appellate Court. Therefore, the appeal deserves to be dismissed.

5 I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

6. Undisputedly, there were dispute with regard to partition of property of the plaintiff along with his brothers and mother-Bedin Bai and eventually on mutual consent, the matter was referred to seven panchas, the panchas delivered their arbitration award on 14.7.73 (Ex.P/1), but the plaintiff did not accept the award and ultimately, filed an application under Section 30 read with Section 33 of the Act of 1940 (Ex.P/8) for setting aside arbitration award dated 14.7.73, but during pendency of the said application, the application (Ex.P/2) was filed by the parties including the

plaintiff and Ram Murat from whom defendants No.3 to 6 have purchased the suit property on 17.7.75 before learned District Judge and ultimately, that application was allowed and compromise decree dated 31.7.75 (Ex.P/3) was passed by learned District Judge holding that compromise entered into between the parties is in accordance with compromise application dated 15.7.75. Thereafter, compromise decree was questioned by the plaintiff's mother-Bedan Bai in Civil Suit No.412/81 before the High Court of Madhya Pradesh. On 12.1.82 the High Court of Madhya Pradesh dismissed the civil revision upholding the compromise decree, as such, compromise decree entered into between the parties pursuant to the order of the Court has become final. The appellants/defendants are purchasers of the suit property, which is covered by compromise decree dated 31.7.75 (Ex.P/3). The defendants' only and only plea before the First Appellate Court that transaction dated 27.7.74 (Ex.D/2) is hit by Section 52 of the TP Act. It has further been held by the First Appellate Court that compromise decree dated 31.7.75 passed by learned District Judge, Bilaspur duly affirmed by the Madhya Pradesh High Court is binding on Ram Murat, seller of the defendants and even otherwise, the property is undivided family property and Ram Murat was not entitled to alienate the same in favour of the defendants.

7. The question for consideration would be whether the First Appellate Court is justified in holding that impugned transaction is hit by Section 52 of the TP Act.

8. At this stage, it would be profitable to take notice of Section 52 of the TP Act, which states as under:-

> "**52. Transfer of property pending suit relating thereto**.-During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

9. From focused perusal of the above-stated provision, it is quite vivid that section 52 of the TP Act prohibits alienation or any transaction in respect of any immovable property for being subject-matter of the suit or proceeding. In order to bring into operation the rule of *lis pendens*, the following requirements must be fulfilled:

> 1. There should be a suit or proceeding pending between the parties;
>
> 2. The suit or proceeding should *bona fide* and not collusive;
>
> 3. It must relate to any right to immovable property;
>
> 4. The involvement of any right to immovable property is not enough, but that right should be directly and specifically in question;
>
> 5. The other party, that is to say, the party other than the one making the transfer during the pendency of the suit, must have some right under the decree in then suit; and
>
> 6. The alienation or transaction is calculated to prejudice the right of that party under any decree or order which

may be made in the suit.

10. In the matter of **Sanjay Verma v. Manik Roy and others**[1] the Supreme Court has clearly held that a transferee *pendente lite* is bound by the decree just as much as he was a party to the suit. The principle of law laid down states as under:

> "12. The principles specified in Section 52 of the T.P. Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee *pendente lite* is bound by the decree just as much as he was a party to the suit. The principle of *lis pendens* embodied in Section 52 of the T.P. Act being a principle of public policy, no question of good faith or *bona fide* arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court."

11. In the matter of **A. Nawab John and others v. V.N. Subramaniyam**[2] the Supreme Court has considered the doctrine of l*is pendens* and held as under:-

> "17. Section 52 of the Transfer of Property Act, (for short 'the T.P.Act') incorporates doctrine of lis pendens and it stipulates that during the pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject-matter of such suit or proceeding cannot be "transferred or otherwise dealt with", so as to affect the rights of any other party to such a suit or proceeding.

1 AIR 2007 SC 1332
2 (2012) 7 SCC 738

The Section is based on the principle:

> "41……….that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the some course of proceeding." (Bellamy v. Subine[3], ER p. 849).

Quoted with approval by this Court in Vinod Seth v. Devinder Bajaj[4]. (SCC p. 29, para 41)

18. It is settled legal position that the effect of Section 52 is not to render transfers affected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

> "12......The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court." (Sanjay Verma v. Manik Roy[5], SCC p. 612, para 12.)"

12. In the matter of **Sunita Jugalkishore Gilda v. Ramanlal Udhoji Tanna (dead) through LRS. and others**[6] while explaining the doctrine of lis pendens it was held by the Supreme Court that doctrine is intended to prevent a party to suit to make an assignment inconsistent with the rights which may be decided in the suit and which might require a further party to

3 (1857) De G & J 566 : 44 ER 842
4 (2010) 8 SCC 1
5 (2006) 13 SCC 608
6 (2013) 10 SCC 258

be impleaded in order to make effectual the court's decree.

13. In the matter of **Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and others**[7] it was held by the Supreme Court that doctrine of lis pendens is a doctrine based on the ground that it is necessary for administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation.

14. Similarly, in the matter of **Kirpal Kaur v. Jitender Pal Singh and others**[8] the Supreme Court relying upon and following the principle of law laid down in **Jagan Singh v. Dhanwanti**[9] held that “lis” continues so long as final decree has not been obtained from the court and complete satisfaction thereof has not been rendered to the aggrieved party contesting the civil suit. It has further been held that it would be plainly impossible that any action or suit could be brought to a successful termination, if alienation pendente lite were permitted to prevail.

15. The principles of law laid down in **A. Nawab John** (supra) and **Jagan Singh** (supra) have been followed with approval in **T. Ravi and another v. B. Chinna Narasimha and others**[10.]

16. Reverting to the facts of the present case in the light of principles of

7 (2013) 5 SCC 397
8 (2015) 9 SCC 356
9 (2012) 2 SCC 628
10 (2017) 7 SCC 342.

law laid down by the Supreme Court in **A. Nawab John** (supra) following in **T. Ravi** (supra) *qua* doctrine of *lis pendens*, it is quite vivid that in the instant case, it is not in dispute that Civil Suit No.6-A/73 titled as Ramkishore Soni v. Sevakram and others was filed pending before the District Judge, Bilaspur pursuant to the application filed by the plaintiff since 21.12.73 (Ex.P/8) and decreed on 31.7.75 and the suit property was sold by the plaintiff's brother Shri Ram Murat in favour of the defendants on 27.2.74 (Ex.D/2) during pendency of that civil suit (arbitration proceeding). It is also pertinent to mention here that on the date of sale, the arbitrators had already delivered their arbitration award and in that award the suit property fell in share of plaintiff-Ramkishore. Not only this, Ram Murat was also one of the defendant in Civil Suit No.6-A/73 and despite having pendency and knowledge of civil suit between the parties and despite the fact that Ram Murat has even not questioned the award as the suit property fell in share of the plaintiff, yet Shri Ram Murat sold the suit property in favour of defendants No.3 to 6, which is squarely covered by doctrine of *lis pendens* incorporated under Section 52 of the TP Act and explained by the Supreme Court in above-stated judgments (supra).

17. Submission of Mr.Arvind Shrivastava, learned counsel for the appellants, that earlier civil suit No.6-A/73 was collusive suit between the parties cannot be accepted. The defendants' seller Ram Murat did not question the award or compromise decree at any point of time either before the District Judge or before the High Court of Madhya Pradesh holding the award or decree to be collusive. The purchaser cannot

question the nature of suit or proceeding, which has not been questioned even by a person from whom they have purchased the property.

18. In the considered opinion of this Court, alienation made by Ram Murat from whom the defendants have purchased the suit property is nothing but calculated design to prejudice the right of the plaintiff in his suit property which had already been allocated in his share by arbitration award much prior to alienation made by Shri Ram Murat, as such, the First Appellate Court has rightly held that Section 52 of the TP Act is squarely attracted, which is neither perverse nor contrary to record. The substantial question of law is answered against the defendants and in favour of the plaintiff. The judgment and decree of the First Appellate Court is hereby affirmed.

19. Accordingly, the second appeal deserves to be and is hereby dismissed. No cost(s).

20. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-