

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.297 of 2017
Date of decision : 16.01.2018

Hardev Singh

...Petitioner

Versus

Baljinder Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jasbir Rattan, Advocate for the petitioner.

Mr. Ishan Gupta, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

This revision petition has been filed against the order dated 18.10.2014 passed by the Executing Court, affirmed in appeal by judgment dated 06.08.2016.

Whether rule of lis pendens-transfer of the property during the pendency of suit would also apply to a immoveable property which is not directly and specifically in question, in a suit?.

Certain facts are required to be noticed. The Decree Holder filed a suit for recovery on the basis of the pronote which was decreed on 10.12.2012. The defendant in the suit i.e. Jagjit Singh sold the property vide registered sale deed dated 24.05.2010 in favour of Gurpreet Kaur, whereas Gurpreet Kaur thereafter sold the property in favour of Baljinder Kaur vide sale deed dated 27.05.2011.

It may be further noticed that on an application under Order 38 Rule 5 CPC, status-quo with regard to the alienation of the property was

granted in favour of the plaintiff on 07.06.2010 i.e. after the sale deed had already been executed by Jagjit Singh in favour of Gurpreet Kaur. In the execution of the decree for recovery of the money, the Decree Holder sought to recover the amount by putting the property which had already been sold by way of public auction. Subsequent purchaser-Baljinder Kaur filed objections. The aforesaid objections were allowed by the Executing Court after considering the provision of Section 52 of the Transfer of Property Act, 1882. Appeal filed against the aforesaid order was dismissed by the learned First Appellate Court.

As noticed earlier, the only question which requires determination is whether the sale/alienation of the property during the pendency of the recovery suit in which any right to immoveable property is not directly and specifically in question, would be hit by Rule of Lis Pendens or not. Section 52 of the Transfer of Property Act, 1882 is extracted 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 immoveable 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.*

[Explanation.—For the purposes of this section, the

pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]”

A careful reading of the aforesaid provision would prove that the Rule of lis pendens would apply only in a case where any right to immoveable property is directly and specifically in question. In a suit for recovery, which was filed only on the basis of the pronote, right to the immoveable property is neither directly nor specifically in question.

Learned counsel for the petitioner has relied upon the judgment passed by the Division Bench of this Court, reported as 2009(2) Civil Court Cases, 345, *Yogeshwar Education Trust Vs. Gurmeet Kaur and others*. I have carefully read the aforesaid judgment. The aforesaid judgment was not arising out of a suit for recovery of the amount. The questions which were answered by the Court are extracted as under:-

“i) Whether the principles of lis pendence would apply in a case where sale has been effected after filing of SLP in the Supreme Court but before leave to appeal has been granted. In other words, whether the principles of lis pendence would apply in respect of sales executed in favour of the appellant-Trust on 4.7.1985, 24.10.1985 and 23.12.1985 after RSA 1020 of 1973 was dismissed by this Court on 8.3.1982 and SLP had been filed in the Supreme Court on 19.7.1982, however, leave to appeal was granted on 13.4.1987 ?

ii) Whether the effect of grant of leave to appeal is to be taken from the date of filing of the SLP i.e. on 19.7.1982 or from the date leave to appeal was granted on 13.4.1987 ? and

iii) Whether in any case, the plea of bonafide purchaser in terms of Section 41 of the Transfer of Property Act is available to the appellant in case the land purchased by him is affected by the principles of lis pendence.”

Hence, the reliance placed by the learned counsel for the petitioner on the Division Bench judgment of this Court does not advance the case of the petitioner.

Other eventuality on which the sale deed executed by the Executant can be ignored is, attempt of the Judgment Debtor to defraud/cheat the Decree Holder where the Court comes to the conclusion that the property was transferred only with a view to frustrate the decree which was likely to be passed against the Judgment Debtor. In the present case, no material has been brought on record to prove that the sale deed executed by the Judgment Debtor on 24.05.2010 was with a view to defraud the Decree Holder and frustrate the decree which may have been passed against the Judgment Debtor.

In view of the aforesaid discussion, there is no scope for interference in the order under challenge.

Revision petition is dismissed.

16.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No