

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

RSA No.4466 of 2010 (O&M)

Date of Decision.06.04.2018

Daljit Singh

.....Appellant

Vs

Janraj Singh and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Chopra, Senior Advocate with
Mr. Harminder Singh, Advocate
for the appellant.

Mr. Ravish Bansal, Advocate
for respondent No.1.

Mr. Harsh Bungar, Advocate
for respondent No.2.

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AMIT RAWAL J.

The appellant-plaintiff is in regular second appeal against the judgment and decree dated 27.04.2007 passed by the trial Court whereby the relief sought for possession by way of specific performance of agreement to sell had been declined and the suit was partly decreed for alternative relief of recovery of ₹40,000/- along with pendente lite and future interest @12% per annum, which has been upheld by the lower Appellate Court vide judgment and decree dated 24.10.2009.

It would be apt to give facts emanated from the pleadings of the parties, resulting into decisions of the Courts below. The appellant-plaintiff instituted the suit on 23.12.1992 claiming specific performance of agreement to sell dated 17.08.1990 in respect of land measuring 79 kanals 9 marlas @₹80,000/- per acre against the payment of earnest money of ₹40,000/- and the balance amount of ₹7,54,000/- was to be paid to the

or before 30.11.1992. As per the averment in the plaint, the agreement to sell contained usual term and condition that if defendant No.1 failed to perform his part of the agreement, the plaintiff could seek the specific performance of the agreement through the process of the court. Even the defendant No.1 did not come forward for performance of his part of the contract. The plaintiff remained present on 30.11.1992 in the office of Sub Registrar, Shahkot with the balance sale consideration with all the expenses for stamp papers from morning to evening but defendant No.1 did not turn up to perform his part of the agreement. The appellant-plaintiff marked his presence by submitting an affidavit before the Executive Magistrate. When the defendant No.1 did not come forward, the suit aforementioned was filed within 23 days of the expiry of period stipulated in the agreement for execution and registration of the agreement to sell.

The defendant No.1 appeared and filed the written statement and denied the execution of the agreement to sell, much less, receipt of the earnest money. It was further averred that the land in question was joint Hindu family/coparcenary property. All the other averments in the plaint were denied. During the pendency of the suit, defendant No.2 namely Shingara Singh son of Labh Singh also impleaded as party on 25.1.1993 on the premise that defendant No.1 Janraj Singh, vendor, on 8.1.1993 executed a sale deed in favour of defendant No.2 in respect of the suit property on the basis of the alleged agreement to sell dated 19.11.1990 for a sum of ₹6,45,937.50 i.e. after the institution of the suit wherein on 24.12.1992, status quo order qua alienation with regard to share of defendant No.1 was granted till 12.1.1993.

Defendant No.2 filed separate written statement on 25.1.1993

stating therein that defendant No.1 sold the property to him by delivering possession and mutation was also sanctioned. It was alleged that the appellant-plaintiff and respondent-defendant No.1, vendor, had fabricated an ante-dated document, for, the defendant No.1 did not disclose the factum of the agreement to sell executed in favour of the plaintiff and therefore, was a bona fide purchaser.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for grant of decree of possession by way of specific performance of the agreement to sell dated 17.8.1990 as prayed for? OPP*
- 2. Whether in the alternative plaintiff is entitled to recover Rs.80,000/- as claimed in the head note of the plaint? OPP*
- 3. Whether the plaintiff was ready and willing to perform his part of the contract? OPP*
- 4. Whether defendant No.1 executed agreement dated 17.8.1990 to sell the land in dispute in favour of the plaintiff? OPP*
- 5. If issue No.4 is proved whether the agreement dated 17.8.1990 is result of fraud and collusion and it is not binding on defendant No.2 as alleged in the written statement? OPD*
- 6. Whether the defendant No.2 purchased the land in dispute from defendant No.1 on 8.1.1993, if proved whether the transactions not hit by doctrine of lis pendens? OPD*
- 7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*

8. *Whether the plaintiff has no locus standi to file the present suit? OPD*

9. *Relief.*”

The appellant-plaintiff in support of the plaint examined himself as PW2, PW1 Kulwant Singh deed writer, Jasjit Singh as PW3 and closed the evidence whereas the defendants examined Kirpan Singh as DW1, Shangara Singh as DW2, B.M. Sehgal as DW3, Subhash Chander as DW4 and tendered into evidence jamabandi for the year 2003-2004 as Ex.DW4/4 and khasra girdawari as Ex.DW4/5.

On the preponderance of evidence, the trial Court decided issue No.1 against the plaintiff and issue Nos.2 to 5 were decided in favour of the plaintiff but still declined the discretionary relief by confining to the alternative relief. The reason for not granting the discretionary relief was that the defendant No.1 was brother-in-law of the plaintiff and therefore, there was a possibility of collusion between the plaintiff and defendant No.1. The appeal preferred by appellant-plaintiff before the lower Appellate Court was dismissed.

Mr. A.K. Chopra, learned Senior Counsel assisted by Mr. Harminder Singh in support of memorandum of appeal raised the following submissions:-

(i) The agreement to sell in favour of the appellant-plaintiff was executed on 17.8.1990 whereas in favour of defendant No.2 the sale deed was executed on 8.1.1993 i.e. during the pendency of the suit, therefore, doctrine akin to *lis pendens* would be applicable.

(ii) The suit was filed on 23.12.1992 and the next date before

the trial Court was 12.1.1993. Defendant No.1 appeared before the Sub Registrar and got the sale deed executed in favour of defendant No.2.

(iii) Defendant No.1 did not file any cross-appeal vis-à-vis the alternative relief granted to the appellant-plaintiff i.e. refund of the amount of ₹40,000/- along with interest @12% per annum.

(iv) The agreement to sell has been proved through the testimony of Kulwant Singh, deed writer and Jasjit Singh, attesting witness. The defendant No.2 is purchaser of the suit land during the pendency of the suit and therefore, cannot be said to be bona fide purchaser.

(v) Defendant No.1 appeared before the trial Court on 25.02.1993 and admitted the execution of the agreement to sell dated 17.08.1990. It is in that background he deposed that he was ready and willing to execute the sale deed in favour of the appellant-plaintiff. If there was any collusion, he would not have suffered a statement after having executed a sale deed dated 8.1.1993 in favour of defendant No.2. Rather it was with his consent and therefore, no collusion could be attributed between the appellant-plaintiff and defendant No.1. Rather collusion was between defendant No.1 and defendant No.2 as respondent-defendant No.1 showed undue haste in execution of the sale deed as despite being aware of the pendency of the suit.

(vi) Once defendant No.1 had admitted the agreement to sell, there was no occasion for both the Courts below to render a finding that the agreement to sell dated 17.08.1990 was an

outcome of forgery. The doctrine of *lis pendens* had totally been ignored by both the Courts below.

In support of his contentions, he relied upon the judgment rendered by Hon'ble Supreme Court in **Sanjay Verma vs. Manik Roy and others (2006) 13 SCC 608; 2007(1) RCR (Civil) 408** to contend that Section 52 of the Transfer of Property Act postulates the condition that alienation will in no manner affect the rights of other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court. In other words, the transfer *pendent lite* would be bound by a decree, in the absence of challenge to the sale deed through which he derived title during the pendency of the suit. **Usha Sinha Vs. Dina Ram and others (2008) 7 SCC 144; 2008(3) RCR (Civil) 145** to the effect that when litigation over the property is pending between the parties and a third party purchased the property from the vendor which was subject matter of litigation, a purchaser during the pendency of the litigation has no right to resist or obstruct the execution of decree, as a transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law and on similar lines, **Guruswamy Nadar Vs. P. Lakshmi Ammal (D) through LRs and others (2008) 5 SCC 796; 2008(3) RCR (Civil) 173.**

Per contra, Mr. Ravish Bansal, learned counsel appearing for respondent No.1 and Mr. Harsh Bungler, learned counsel appearing for respondent No.2, subsequent purchaser, submitted that the finding arrived at by both the Courts below does not call for interference as the same is based upon the appreciation of both oral and documentary evidence brought on record and submissions of Mr. Chopra do not make out a case to be brought within the ambit of perversity.

The plaintiff and defendant No.1 colluded with each other to hush up right of the defendant No.2 by defendant No.1, who made a statement after two months of filing of the written statement that he was willing to execute the sale deed in favour of the plaintiff on the basis of the agreement to sell. They are brother-in-law of each other which relationship was not disputed. Defendant No.2 had proved on record that he was owner in possession of the suit land from the date of execution of the sale deed through the testimony of B.M. Sehgal, Shangara Singh as well as Subhash Chander and rightly so, the Courts did not grant the discretionary relief.

In support of his contention, he relied upon the judgment of Hon'ble Supreme Court rendered in *Jayakantham and others Vs. Abaykumar (2017) 5 SCC 178; 2017(2) RCR (Civil) 104* to contend that the Court is not bound to grant the discretionary relief merely because it was lawful to do so, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. The facts which are in controversy are that defendant No.1 did not dispute the agreement to sell after he suffered a statement after two months from the date of filing of the written statement which revealed that the aforementioned suit was filed on 23.12.1992 and the agreement to sell in favour of plaintiff was entered on 17.08.1990 whereas the sale deed in favour of defendant No.2 was executed on 8.1.1993 i.e. during the pendency of the suit. The provisions of Section 52 of the Transfer of Property Act, leaves no manner of doubt that pendency of the suit or proceedings shall be deemed to have commenced from the date of presentation of the plaint or institution of proceedings in court of competent jurisdiction and 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. None of the ingredients evaporated enabling both the Courts below to decline the relief under Section 20 of the Specific Relief Act, particularly, when the finding on issue No.3 qua readiness and willingness has remained unassailed. *Usha Sinha's case* (supra) was a case where during the pendency of the suit, registered sale deed dated 15.2.2000 was executed and suit came to be decided by way of ex parte decree dated 24.05.2001. The Court on the basis of the aforementioned facts found that in execution of a decree, the transferee could not oppose or obstruction the transfer of the property as the transaction was hit by doctrine akin to *lis pendens*.

The point to be considered is whether in the facts and circumstances noted above, defendant No.2 can be treated to be a bona fide purchaser, who had the knowledge of the agreement to sell. The suit was filed on 23.12.1992. The next date before the trial Court was 12.1.1993, however, the sale deed in favour of defendant No.2 had been executed by defendant No.1 on 8.1.1993. Both defendant No.1 and defendant No.2 are resident of village Kang Kalan, Tehsil Nakodar, District Jalandhar, therefore, it could not be believed that he would not have the knowledge, for, the sale deed in favour of defendant No.2 was for a lesser amount than the one agreement to, for, as indicated above, the suit property was sold for ₹6,45,937.50 vis-à-vis ₹7,94,000/- for which the suit property was agreed to be sold vide agreement to sell dated 17.08.1990. It has never been seen that

the immovable property is being sold in paise also. Mere relationship between plaintiff and defendant No.1 would not be a ground to deny the discretionary relief, for, the defendant No.1 was afraid that he may be hauled up in a criminal prosecution for having committed some criminal offence during the subsistence of the agreement to sell dated 17.08.1990 or during the pendency of the suit by executing sale deed dated 8.1.1993, therefore, came out after two months from the date of filing of the written statement that he was ready and willing to execute the agreement to sell dated 17.8.1990. In my view, the remedy for defendant No.2 in such circumstances was to launch appropriate criminal proceedings against defendant No.1. In the absence of the same, I am of the view that perhaps defendant No.2 was also afraid of surfacing of truth i.e. the knowledge of the subsistence of the previous agreement to sell dated 17.8.1990 as well pendency of the suit dated 23.12.1992.

All these facts have not been looked into by the Courts below and not even the provisions of Section 52 of the Transfer of Property Act, therefore, there is abdication, illegality and fallaciousness.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench

of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government

of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Both the Courts below in my view ought to have addressed the issue on the provisions of Section 52 of the Transfer of Property Act and having failed to advert to the same, the judgments and decrees granting the alternative relief are not sustainable in the eyes of law and the same are hereby modified to the extent that suit of the appellant-plaintiff is decreed in toto by granting specific performance of agreement to sell dated 17.8.1990. The appellant-plaintiff is granted two months to deposit balance sale consideration from the date of receipt of certified copy of this judgment and the defendant No.1 is directed to come forward for execution and

registration of the sale deed within one month thereof and in case, he fails to perform his part of the agreement, the appellant-plaintiff shall be entitled to seek execution of the judgment passed by this Court in accordance with law. Since defendant No.2 had already paid the amount of Rs.6,45,937.50, the defendant No.1 is directed to return the same along with interest @12%, the same interest which had been awarded in favour of defendant No.1. In case of failure to do the same, the defendant No.2 shall be entitled to seek execution of this judgment in competent court of law for recovery of the amount along with interest as indicated above.

The regular second appeal is allowed in the above terms.

(AMIT RAWAL)
JUDGE

April 06, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No