

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA No.48 of 2017 (O&M)
Date of Decision: 17.11.2018

Jagwant Singh

..... Appellant

Versus

Balwinder Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arihant Jain, Advocate and
Mr. Arun Jindal, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Present appeal has been filed against dismissal of objections by auction purchaser objecting to the execution of the decree for specific performance of the agreement to sell dated 21.11.2000 with respect to the land measuring 8 bighas and 1 biswas. Objector-auction purchaser is brother of Saudagar Singh (judgment-debtor) who had agreed to sell in favour of decree-holder Balwinder Singh. Objector petitioner Jagwant Singh is stated to have purchased the property owned by his brother Saudagar Singh pursuant to a decree for recovery of Rs.4,05,000/- passed on 18.07.2001.

The question which needs determination is whether attachment of the land pursuant to a decree for recovery of money and subsequent sale of the property would defeat the rights of the plaintiff who has got a decree for specific performance of the agreement to sell in his favour. No doubt, agreement to sell does not create any right in the property, however, the

agreement to sell creates an obligation arising out of the agreement to sell and such obligation is enforceable through suit for specific performance of the agreement to sell. Learned counsel for the objector-petitioner has referred to Section 64 of the Code of Civil Procedure and stressed on the point that the property in question was attached on 15.05.2002 before a suit for specific performance of the agreement to sell was filed by the decree-holder Balwinder Singh. Hence, he submitted that once the property had been attached prior to the filing of the suit for specific performance of the agreement to sell, therefore, the orders passed by the Courts below dismissing the objection are erroneous. The issue raised has already been decided by the Hon'ble Supreme Court in the case of V.K. Sreedharan Vs. Chandramaath Balakrishnan and another (1990) 3 SCC 291. In the aforesaid judgment, Hon'ble Supreme Court examined difference of views expressed by different High Courts. View expressed in a judgment passed by Punjab and Haryana High Court in the case of Mohinder Singh Vs. Nanak Singh, AIR, 1971 P&H 381 was held to be wrong and the view of Madras High Court, Calcutta High Court, Bombay High Court and Travancore-Cochin High Court were upheld. The operative part of the judgment passed by the Hon'ble Supreme Court in Paras 7, 8 and 9 are extracted as under:-

“7. Hence, under a contract of sale entered into before attachment the conveyance after attachment in pursuance of the contract passes on good title in spite of the attachment. To the same effect are the decisions of the Bombay High Court in Rango Ramachandra Kulkarni vs. Gurlingappa Chinnappa Muthal and Yeshvant Shankar Dunakhe vs. Pyaraji Nurji Tamboli. The High Court of Travancore-Cochin in Kochuponchi Varughese vs. Ouseph Lonan has also adopted the same reasoning.

8. The Punjab & Haryana High Court, however, has taken a

contrary view in Mohinder Singh vs. Nanak Singh. It has been held that a sale in pursuance of a pre-attachment agreement is a private alienation of property and must be regarded as void against the claim of the attaching creditor. In support of this proposition, Section 64 of the Code of Civil Procedure was relied upon which according to the High Court was intended to protect the attaching creditor against private alienation. This was also the observation of the Lahore High Court in Buta Ram vs. Sayyad Mohammad.

9. In our opinion, the view taken by the High Courts of Madras, Bombay, Calcutta and Travancore-Cochin in the aforesaid cases appears to be reasonable and could be accepted as correct. The agreement for sale indeed creates an obligation attached to the ownership of property and since the attaching creditor is entitled to attach only the right, title and interest of the judgment-debtor, the attachment cannot be free from the obligations incurred under the contract for sale. Section 64 CPC no doubt was intended to protect the attaching creditor, but if the subsequent conveyance is in pursuance of an agreement for sale which was before the attachment, the contractual obligation arising therefrom must be allowed to prevail over the rights of the attaching creditor. The rights of the attaching creditor shall not be allowed to override the contractual obligation arising from an antecedent agreement for sale of the attached property. The attaching creditor cannot ignore that obligation and proceed to bring the property to sale as if it remained the absolute property of the judgment-debtor. We cannot, therefore, agree with the view taken by the Punjab and Haryana High Court in Mohinder Singh's case."

This judgment passed by the Hon'ble Supreme Court in V.K. Sreedharan's case (supra) has been followed by the Hon'ble Supreme Court in a subsequent judgment Rajender Singh Vs. Ramdhar Singh and others (2001) 6 SCC 213 when Hon'ble Supreme Court while remitting the case had referred to the question that whether agreement to sell entered into by

the judgment-debtor prior to the attachment of the property in execution of the decree, would prevail over the attachment pursuant to a decree for recovery of the money. Keeping in view the aforesaid judgments passed by the Hon'ble Supreme Court, this Court does not find any error in the orders passed by the Courts below dismissing objection petition filed by the objector namely Jagwant Singh.

Hence, the appeal is dismissed.

17.11.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No