

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

ESA No.26 of 2018(O&M)

Date of Decision: August 17, 2018

Smt. Daljit Kaur

...Appellant

Versus

Raghubir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr. Rajesh Kumar, Advocate
for the appellant.

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HARINDER SINGH SIDHU, J.

This Execution Second Appeal has been filed impugning the orders of the Courts below whereby the objections filed by the appellant/objector have been dismissed.

The appellant filed an application under Order 21 Rule 99 of the Code of Civil Procedure for setting aside the ex-parte judgment and decree dated 19.03.2009 passed in Civil Suit titled as 'Raghubir Singh Vs. Arvinder Kumar' and for restraining the decree holder from taking possession of the house in dispute from the appellant/objector.

The case of the appellant/objector was that she had purchased the suit property vide sale deed dated 16.11.2009 from Surinder Kaur w/o Raminder Singh, village Lambeyan, Tehsil and District SAS Nagar, Mohali and since then she was residing therein. The property was transferred in her name on 10.12.2009. Before purchasing the suit property, she had entered into an agreement dated 24.04.2009 with the said Surinder Kaur.

She had also verified the revenue and municipal records regarding the title of the suit property. It was claimed that ex-parte decree had been obtained by the decree holder by conniving with the Judgment Debtor and that the judgment debtor had committed fraud by selling the suit property during the pendency of the suit without informing the objector) that ex-parte judgment and decree dated 19.05.2009 had been obtained by the decree holder.

The case of the decree holder in the reply to the application was that the sale in favour of the objector is hit by the principle of *lis pendens* under Section 52 of the Transfer of Property Act and that the objector stepped in the footsteps of the original owner. The property had been sold to the objector by the judgment debtor during the subsistence of an order of *status quo*. The dispute between the decree holder and the judgment debtor Arvind Kumar was going on from 05.10.2006 and the *status quo* order had been passed in favour of the decree holder. The judgment debtor Arvind Kumar had executed a sale deed dated 08.01.2008 in favour of Sant Singh S/o Succha Singh, who in turn had sold the suit property to Surinder Kaur vide sale deed dated 25.07.2008 and the objector purchased it from Surinder Kaur on 16.11.2009, after the decision of the Civil Suit on 16.11.2009. It was pleaded that plea of bona fide purchaser was also not available to the objector.

The Courts below have dismissed the objections primarily on the ground that the objector being a purchaser *pendente lite* the objections were not maintainable in view of Order 21 Rule 102 of the Code of Civil Procedure. When the petition itself was not maintainable, there was no need to frame the issues. The plea of subsequent vendor during the pendency of

proceedings could be simply ignored in terms of Section 52 of the Transfer of Property Act. It was also held that plea of collusion between the decree holder and judgment debtor was not sustainable as the suit had been instituted on 26.05.2007 on the basis of an agreement to sell dated 19.06.2006 whereas the objector had purchased the property on 16.11.2009 after the decision of the suit on 19.03.2009. The Courts below have relied upon various decisions of the Hon'ble Supreme Court as well as this Court in the cases of *T.G. Ashok Kumar Versus Govindammal & another 2011 (1) Apex Court Judgments 01 (SC)* and *Tara Singh Vs. Satinderpal Singh 2013 (1) PLR 228*.

The objections have been validly dismissed by the Courts below relying on judicial precedents and the provisions of Order 21 Rule 102 CPC as per which Rules 98 and 100 shall not apply in a case where the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed.

There is no merit in the present appeal and the same is dismissed.

August 17, 2018

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No