

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

**ESA-31-2018 (O&M)
Date of decision : 9.5.2018**

Saroj Singla

..... Petitioner

Versus

Vikas Bhalla and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.S. Bassi, Advocate,
Mr. C.S. Bassi, Advocate and
Mr. I.P.S. Bassi, Advocate for the petitioner.

Mr. Ranjit Saini, Advocate for respondents-caveator.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present execution second appeal is the judgment dated 8.3.2018, passed by learned Additional District Judge, Yamunanagar at Jagadhri affirming the order dated 22.11.2016 passed by learned Civil Judge (Senior Division), Yamuna Nagar at Jagadhri vide which third party objections filed by the present petitioner namely Saroj Singla were dismissed.

Heard.

It comes out that decree holder-Bhachan Singh filed a suit for possession by way of specific performance of agreement to sell dated 21.7.2004. Suit was instituted on 24.1.2006 against defendant-judgment debtor No. 1-Vikas Bhalla stating that Vikas Bhalla had agreed to sell the

house for consideration of Rs. 2.00 lacs. He had received Rs. 1,30,000/- as earnest money. Since Bhushan Parkash-defendant No. 2 had purchased the suit property vide sale deed dated 19.6.2005, he was also made party. In the said suit, defendant No. 1 did not appear and was proceeded against ex-parte. Defendant-Judgment-debtor No. 2 appeared on some dates and filed the written statement. Later on he slip away from the proceedings. Consequently ex-parte judgment and decree dated 16.10.2010 was passed by learned Civil Judge (Senior Division), Yamuna Nagar at Jagadhri.

In pursuance to the said judgment and decree dated 16.10.2010, execution was filed in which defendant-judgment debtor No. 2 filed objection whereas defendant-judgment debtor No. 1 proceeded against ex-parte. The objections filed by defendant-judgment debtor No. 2 were dismissed vide order dated 4.11.2014. Thereafter, on deposit of balance sale consideration, sale deed was executed in favour of the plaintiff by the Court. When the warrants of possession were issued, the present petitioner came forward and filed the objections stating that she has purchased the disputed property vide sale deed dated 6.7.2006 from judgment debtor No. 2 namely Bhushan Parkash. It was also claimed that petitioner is in possession of this property. She also claimed that there is a collusion between decree holder and defendants-judgment debtor No. 1 and 2. She also claimed that she is bona fide purchaser.

Needless to say that decree holder disputed all the averments.

From the pleadings following issues were framed.

1. Whether objector is a bona fide purchaser of the suit property?OPP
2. Whether present objections have been filed within limitation? OPO

3. Whether present objections are not maintainable?
OPR
4. Relief.

Learned trial Court after recording the evidence came to the conclusion that disputed property was purchased during the pendency of the suit. Therefore, Rule of *lis pendens* will apply. The objector is not a bona fide purchaser. The objections are not maintainable, however, the objections were filed within the period of limitation. In appeal, the findings were affirmed.

I am of the view that admittedly suit was instituted on 24.1.2006. The sale deed claimed by the present petitioner is dated 6.7.2006 i.e. during the pendency of the suit. Therefore, *Rule of lis pendens* will apply with full force. If the petitioner did not inquire before purchasing the property, she is to blame herself for the same. Therefore, she cannot be called bona fide purchaser by any stretch of imagination.

So far as the collusion is concerned, it comes out that defendant-judgment debtor No. 1 having sold the property to defendant-judgment debtor No. 2 lost the interest in the matter. Defendant-judgment debtor No. 2 has also sold the property during the pendency of the suit and, thereafter, he also apparently lost the interest and was proceeded against ex-parte. However, in execution he came back and filed objections which was dismissed on 4.11.2014. It also comes out that ex-parte judgment and decree was challenged by Shri Bhushan Parkash/defendant-judgment debtor No. 2. He filed an application for setting aside the ex-parte judgment and decree which was dismissed by learned trial Court against which Bhushan Parkash/defendant-judgment debtor No. 2 approached this Court by way of

filing *Civil Revision No. 7489 of 2017* titled as *Bhushan Parkash versus Bachan Singh and another* which was dismissed on 12.2.2018. It goes to show that Bhushan Parkash, judgment debtor No. 2 was contesting the matter and made all the efforts to get the ex-parte judgment and decree set aside.

Learned counsel for the petitioner relied upon an authority of Hon'ble Supreme Court delivered in *Padmakumari and others versus Dasayyan and others, 2015 (3) Law Herald (SC) 1927*. A perusal of the judgment shows that in the said case, in a suit for specific performance plea of bona fide purchaser was raised. However, in the present case, facts are different. In this case, it was during the pendency of the suit for specific performance, the property was purchased from one of the defendants, therefore, the Rule of *lis pendens* is attracted.

He further relies upon an authority of this Court in *ESA No. 472-2005, Bhagwan Bai versus Chiranji Lal and another*. A perusal of the said authority shows that in the said case, plea of collusion was raised. However, Rule of *lis pendens* as attracted in the present appeal was not in issue in the said case.

In view of above, there is no illegality or infirmity in the findings recorded by both the Courts below.

Consequently, present appeal stands dismissed.

Since the main appeal is dismissed, the miscellaneous application pending, if any, also stands disposed of.

9.5.2018
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(KULDIP SINGH)
JUDGE

Whether speaking / reasoned	Yes
Whether Reportable:	No