

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

RSA No.875 of 2018 (O&M)

Date of decision:08.02.2018

Nirmal Singh

Vs.

... Appellant

Buta Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Varinder Singh Rana, Advocate
for the appellant.

Mr. P.K.S.Phoolka, Advocate
for the caveator/respondents.

AMIT RAWAL J. (Oral)

Notice of motion.

Mr. P.K.S.Phoolka, Advocate accepts notice on behalf of the
caveator/respondents.

The present Regular Second Appeal is at the instance of
appellant-defendant No.1/Nirmal Singh, auction purchaser who was not
successful in defending the suit for possession and permanent injunction
instituted by the respondent-plaintiffs, namely, Buta Singh and Bhinder
Kaur, before both the Courts below.

Mr. Varinder Singh Rana, learned counsel appearing on behalf
of the appellant-defendant no.1 submitted that the respondent-plaintiffs
instituted a suit on the premise that they had purchased the suit property
vide sale deed bearing no.2115 dated 26.06.1995 and had taken a loan from

Housefed, Barnala and they were defaulter in making the payment of money, therefore, the property was put to auction on 14.05.2003. Ranjit Singh purchased house in question in open auction on 14.05.2003. The sale was confirmed on 07.07.2003 and the sale certificate was issued on 22.07.2003. The plaintiffs did not file any objections as per the provisions of Punjab State Co-operative Societies Act, 1961 which are paramateria to the provisions of Order 21 Rule 89 or 90 of Code of Civil Procedure but after a gap of 3 years approached the Additional Registrar of the Co-operative Societies for setting aside the auction proceedings as the auction was held without affording the opportunity to the plaintiff for payment of the money. The auction proceedings were set aside, vide order dated 08.05.2006. The respondent-plaintiffs moved an application for restoration of the possession but the same was disposed of vide order dated 28.08.2007 with liberty to file a suit. It is in this backdrop of the matter, the suit aforementioned was filed.

He further submitted that during the interregnum, appellant-defendant no.1 had entered into an agreement to sell dated 10.06.2004 (Ex.D1) with the auction purchaser-Ranjit Singh and the power of attorney of even date (Ex.D2). It is complete sale as per the provisions of the Contract Act, and has been put in possession of the suit property. Both the Courts below abdicated in decreeing the suit by putting the clock back which is not permissible in law as third party rights have been created on account of willful default of the respondent-plaintiffs for which they have to suffer. In case, the auction proceedings are set aside in a routine manner, it

would not be beneficial to the decree holder in getting the suit decreed. Randhir Singh filed a civil suit against the order dated 08.05.2006 which was dismissed by both the Courts below but this Court in Regular Second Appeal granted the permission to withdraw the suit with liberty to file a fresh one by impleading the plaintiff herein as party and the same is stated to be pending adjudication, wherein appellant-defendant no.1 has been arrayed as defendant, thus, there is illegality and perversity in the findings under challenge.

Per contra, Mr. P.K.S.Phoolka, learned counsel appearing on behalf of the caveator/respondent-plaintiffs submitted that the concurrent findings of facts and law cannot be interfered until and unless there is gross illegality and perversity. The Additional Registrar in its order dated 08.05.2006 noticed that the auction was conducted in most undue haste without effecting service upon the plaintiffs as at that point of time, they were living abroad. In fact, plot was allotted to them. Even FIR bearing no.420 dated 14.04.2005 was lodged against appellant-defendant no.1 but he has been discharged. All these facts weighed in the mind of the Courts below while granting the decree and injunction.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Rana.

The facts noted above have not been controverted by learned counsel for the parties. The only point which has to be seen by this Court is for determination of controversy, whether the appellant stated to have

purchased the rights from Ranjit Singh, who has already pursued the remedy by way of civil suit which is pending adjudication, wherein the order of the Additional Registrar has been challenged and the appellant has been arrayed as defendant either to transpose himself as plaintiff or file a suit claiming damages and some interest thereon, for, conceded position on record is that the respondent-plaintiffs were the original allottees of the plot and were put in possession, owing to default in making payment of installments of the loan taken from Housefed, without resorting to the principles of natural justice. This is what of the import of the order as of now, subject to the adjudication of the same in the pending suit.

In my view, the Courts below have not committed illegality and perversity in decreeing the suit for possession and permanent injunction and further injuncting the defendants from changing the nature of the suit property.

As an upshot of my findings, no ground is made out for interference in the findings under challenge, much less no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 08, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No