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

C.R. No.7283 of 2015 (O&M)
Date of Decision.14.03.2019

Punjland Estate Pvt. Ltd. ..Petitioner

Vs

William Singh Sandhu @ Daljinder Singh Sandhu and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ramandeep Singh, Advocate
for the petitioner.

Mr. R.B.S. Chahal, Advocate
for respondent No.1.

Mr. Arshdeep Bhullar, Advocate
for respondent No.2.

Mr. Prateek Gupta, Advocate
for respondent No.3.

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AMIT RAWAL J.

The present revision petition is directed against the orders 28.05.2014 (Annexure P-1) and 01.08.2015 (Annexure P-2) whereby the application under Order 39 Rule 1 and 2 CPC filed along with the suit (Annexure P-6) for restraining the defendants from alienation of the suit property, has been dismissed.

This Court while issuing notice of motion on 28.11.2015 granted status quo, which was ordered to be continued vide order dated 19.02.2016.

The petitioner-plaintiff instituted the suit for declaration claiming following relief:-

"Suit for declaration to the effect that the sale deed mentioned at Points A to D are illegal, void, without

authority, without consideration, the result of fraud and misrepresentation against the laws of the land and as such are liable to be set aside.

A. Sale Deed bearing Vasika No.1748 registered on 4.5.2010 in favour of defendant No.1 by defendant No.2 of the land measuring 5 bighas 14-3/4 biswas being ¼ share of the land comprised in Khewat No.56 Khatauni No.76, Khasra No.775/23 Min. (0-10), 24 Min. (3-12), 25 Min. (3-15), 26 (3-16), 27 (6-0), 27 Min. (0-7), 29 Min. (4-19) total being 7 bigha 0-3/4 biswas situated at village Rawas Brahmna, Tehsil and District Patiala.

B. Sale deed bearing Vasika No.1750 registered on 04.05.2010 in favour of defendant No.1 by defendant No.2 of the land measuring 5 bigha 14-3/4 Biswas being ¼ share of the land comprised in Khewat No.56, Khatauni No.76, Khasra No.775/23 Min. (0-10), 24 Min. (3-12), 25 Min. (3-15), 26(3-16), 27(6-0), 27 Min. (0-7), 29 Min. (4-19) total being 7 bigha 0-3/4 biswas situated at Village Rawas Brahmna, Tehsil & District Patiala.

C. Sale deed bearing Vasika No.1766 registered on 04.05.2010 in favour of defendant No.1 by defendant No.2 of the land measuring 5 bigha 14-3/4 biswas being ¼ share of the land comprised in Khewat No.56 Khatauni No.76, Khasra No.775/23 Min.(0-10), 24 Min. (3-12), 25 Min. (3-15), 26(3-16), 27 (6-0), 27 Min. (0-7), 29 Min. (4-19) total being 7 bigha 0-3/4 Biswas situated *at village Rawas Brahmna, Tehsil & District Patiala.*

D. Sale deed bearing Vasika No.1767 registered on 04.05.2010 in favour of defendant No.1 by the defendant No.2 of the land measuring 5 bigha 14-3/4 Biswas being ¼ share of the land comprised in Khewat No.56 Khatauni No.76, Khasra No.775/23 Min.(0-10), 24 Min. (3-12), 25 Min.(3-15), 26 (3-16), 27(6-0), 27 Min.(0-7), 29 Min (4-19) total being 7 bigha 0-3/4 biswas situated at village Rawas Brahmna, Tehsil and District Patiala.

And for permanent injunction restraining the defendant No.1, his attorney and agents from alienating by way of sale, mortgage or otherwise or creating any encumbrance upon the land measuring 22 bigha 19 biswas comprised in Khewat No.56 Khatauni No.76, Khara No.775/23Min (0-10), 24 Min. (3-12), 25 Min. (3-15), 26 (3-16), 27 (6-0), 27 Min. (0-7), 29 Min. (4-19) situated at Village Rawas Brahmna, Tehsil & District Patiala.

The pith and substance of the prayer was to challenge the sale deeds executed by defendant No.2 in favour of defendant No.1. The suit was also accompanied by application under Order 39 Rule 1 and 2 CPC.

The respondent No.1/defendant No.1 opposed the suit by raising objections qua maintainability of the suit being barred under the provisions of Section 3 and 4 of the Benami Transactions (Prohibition) Act, 1988.

The trial Court declined the ad interim application by holding that the sale deeds being registered documents carried presumption of truth. Appeal taken before the lower Appellate has also been dismissed.

Mr. Ramandeep Singh, learned counsel appearing on behalf of the petitioner submitted that sale deeds in the name of the petitioner-plaintiff were executed as a fiduciary of respondent No.3, owing to the fact that he suffered a long and protracted matrimonial dispute with his wife and wanted to avoid excessive claims on alimony and maintenance. In fact the petitioner-plaintiff had been in the uninterrupted possession of the said land and enjoying the agricultural yields of the same and therefore, for all intents and purposes was ostensible owner, who can always seek title as per the provisions of Section 43 of the Transfer of Property Act. Clause 45 of the Articles of Association (Anenxure P-4) deals with the power of the Board to lease, hire, sell and dispose of any property, assets and rights of the company whereby sub-clause (l) deals with delegation of powers to the Managing Director. No resolution was passed by the plaintiff company authorizing the Managing Director i.e. defendant No.2, who in the absence of any authority being Managing Director effected sale deeds in favour of defendant No.1. There is no reference to the aforementioned provisions. Though the apprehension of the petitioner-plaintiff can always be protected by taking the aid of provisions of Section 52 of the Transfer of Property Act, thus, the Courts below ought to have granted protection to avoid multifariousness or impleadment of subsequent parties as there would be no end to the litigation. In other words, trial Court instead of restraining the defendant No.1 from creating any third party rights, could have directed the defendant No.1 to take permission from the Court in case he expresses any intention of alienation or creation of third party rights. Ingredients of prima facie case, balance of convenience and irreparable loss had been in existence but ignored for the reasons best known.

Mr. RBS Chahal, learned counsel appearing on behalf of respondent No.1 submitted that the basic claim in the plaint is acquisition of title in a fiduciary capacity tantamounts to a Benami Transaction, which is not permissible after the promulgation of the Benami Transaction (Prohibition) Act, 1988, thus, in such circumstances the petitioner-plaintiff has no locus standi to file the suit, what to talk, of interim application. The suit was filed in the year 2012 two years after the sale deeds, which were effected in 2010. As regards contention with regard to violation of Foreign Exchange Management Act, 1999, FIR registered had already been cancelled, though the criminal misc. petition is pending adjudication in this Court. Respondent No.1 is bona fide purchaser and had purchased property after paying dues to the Bank as the sale deeds were lying in the custody of Bank, owing to mortgage/loan taken by the company. The vendor-defendant No.2, Managing Director, has not been removed, therefore, there cannot be any injunction or bar for selling the land. In fact, contents of the plaint reveals confession on the part of the plaintiff to be not owner of the property. Civil suit filed by Sukhwant Singh, defendant No.2 qua the same is pending whereas civil suit filed by Jagdish Varinder Singh, respondent-defendant No.3 was ordered to be returned by this Court. In support of aforementioned contentions, relied upon Full Bench judgment of Lahore High Court in ***Qadir Bukhsh Vs. Hakam AIR 1932 Lahore 503*** to contend that a person, who commits fraud has no equity to seek interim injunction.

In rebuttal, Mr. Ramandeep Singh submitted that the judgment relied upon by Mr. RBS Chahal is in respect of the final verdict given in the suit and not with regard to interim injunction, thus, urges this Court for setting aside the orders under challenge.

Before reserving the matter for order, I asked Mr. Chahal representing respondent-defendant No.1 whether his client has any intention to create third party rights or dealt with the property, the answer was in affirmative.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Ramandeep Singh. It would be apt to reproduce clause 45 of the Articles of Association:-

> *"45. It is hereby expressly declared that the power of the Board shall include the following that is to say, power subject to Section 292 of the Companies Act, 1956:-*
>
> *(a) To pay costs, charges and expenses preliminary and incidental to the promotion and incorporation of the Company.*
>
> *(b) To purchase take on lease or otherwise acquire property, assets (tangible & intangible, moveable rights & privileges on behalf of the Company.*
>
> *(c) To let on lease or hire, sell otherwise dispose of any property, assets and rights of the Company.*
>
> *(d) To ensure the fulfilment of any contract or engagement entered into or about to be entered into by*

> *mortgage or charge of all or charge of the property of the company or in any other manner.*
>
> *(e) To pledge/hypothecate the credits of the Company.*
>
> *(f) To institute, conduct, defend, compound or abandon any legal proceedings by or against the Company or concerning the affairs of the Company & also the compound or allow time for payment or satisfaction of any claims thereof.*
>
> *(g) To refer any claims by or against the Company to arbitration on behalf of the Company.*
>
> *(h) To make & give receipt, acknowledgemnts releases & other discharges on behalf of the Company.*
>
> *(i) To enter into, carry on, rescind or vary all or any financial arrangement with Blank & other persons of open accounts & operate account with banks, financial institution and other persons.*
>
> *(j) To make draw, sign accept & endorse for and on behalf of the company, bills of exchange, promissory notes, hundies, cheques, securities, bonds, document of title, negotiable and transferable instruments.*
>
> *(k) To sign all documents on behalf of the company.*
>
> *(l) <u>To delegate any of these powers and authority to an officer, Managing Director, Lawyer, Chartered Accountant, Technical Adviser, Attorney, Solicitors or any other persons whether in the employment of the company or not and to authorise, delegates and to execute where special or general power of attorney and other deeds.</u>*

Sale deeds and the written statement do not speak of any resolution in favour of defendant No.2 authorizing him to sell the land of company. However, I would not give any further opinion on this, as it would tantamount to express an opinion on the merits of the suit which would certainly take away valuable right of the parties to the *lis* but the fact of the matter is that both the trial Court and the lower Appellate Court failed to advert to the issues which are specifically raised in the grounds of appeal and even in the application. The Courts below are required to deal with each and every argument of the affected litigant. The doctrine akin to “Lis

Pendens" as per provisions of Section 52 of the Transfer of Property Act is no longer *res integra.* Even if during the pendency of the suit, the beneficiary of the sale deed creates third party that will always be subject to decision of the suit but equally so, Court cannot lose sight of the fact that property will exchange many hands and create unnecessary right and title in favour of third parties, though they would be bound but it cannot be lost sight of fact of third party objection after judgment and decree passed in favour of either of the party can always be raised. The purpose is to curtail the litigation instead of expand it. In my view, trial Court or the lower Appellate Court should have protected the interest of the plaintiff by fixing time line regarding the adjudication of the suit. It is also matter of record that application of the defendant for rejection of the plaint under Order 7 Rule 11 CPC was dismissed and affirmed in revision petition before this Court. Be that as it may, there is already status quo granted by this Court, vide order, as noticed above and continued till pendency of the revision petition. The ratio decidendi relied upon by Mr. Chahal in judgment (supra) would not apply as it is yet to be proved whether the person has come with polluted hands or not.

In view of such circumstances, I am of the view that orders under challenge are not sustainable, as both the Courts below unable to notice the parameters with regard to grant of *ad interim* injunction i.e. prima facie case, balance of convenience and irreparable loss, which heavily lied in favour of the plaintiff. The impugned orders are set aside. The *ad interim* application is allowed and the respondent No.1, his agents, attorney or servants are restrained from creating third party rights or alienating or changing the nature of the land during the pendency of the suit. However, this Court is sanguine that trial Court shall make every endeavour to dispose of the suit as expeditiously as possible. Any observation of this Court may not be construed to be an expression of opinion qua merit of suit.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

March 14, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No