

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ESA No. 9 of 2007 (O&M)
Date of Decision : 09.01.2019

Raj Pal

....Appellant

Versus

Gurjant Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

None for respondents.

Surinder Gupta, J.

This is appeal against concurrent orders/judgments of Courts below whereby objection petition filed by appellant-Raj Pal against attachment of the property earlier owned by his mother, Amarjit Kaur, which was transferred in his (appellant) favour vide decree dated 28.07.1994, were dismissed.

2. Respondent no. 1-Gurjant Singh filed suit for recovery of ₹1,53,975/- against Amarjit Kaur on the basis of pronote and receipt dated 15.04.1993. Appellant-Raj Pal with Baljinder Singh (respondent no. 2), his brother, filed a suit on 02.06.1994, claiming title over the property owned by Amarjit Kaur on the basis of family settlement, which on admission of Amarjit Kaur was decreed on 28.07.1994. Facts as put forth by objector were taken note of by Ist Appellate Court in para 7 of its order while dismissing appeal filed the appellant, as follows:-

“7. The decree-holder Gurjant Singh brought a suit for recovery of an amount of ₹1,53,975/- against judgment-debtor Amarjit Kaur which had been

decreed by the trial Court vide judgment and decree dated 20.08.1999 and in order to recover the said amount Gurjant Singh decree-holder filed a regular execution petition on 18.01.2002 and when the case fixed for reply to an application filed for attachment of the land of the judgment-debtor, then the objections were raised by the sons of the judgment-debtor claiming that they are bona fide owners of the land sought to be attached in view of the decree dated 28.07.1994. The copy of mutation no. 2836 on the basis of decree dated 28.07.1994 has been placed on file vide which the land owned by Amarjit Kaur judgment-debtor has been shown to have been mutated in favour of Rajpal and Baljinder Singh her sons. The pronote is dated 15.04.1993 and the decree passed is dated 28.07.1994. The civil suit was filed by Gurjant Singh in the year 1996 but it is a fact that the transfer of the land was made by the judgment-debtor in favour of her sons-objectors after executing the pronote on 15.04.1993 in favour of the decree-holder for an amount of ₹50,000/-. So on thorough perusal of controversy between the parties and impugned order, it is made out that it was a fraudulent transfer in order to avoid the payment of the amount and so no infirmity has been committed by the learned trial Court by passing the impugned order.”

3. Learned counsel for the appellant has argued that the property was transferred by Amarjit Kaur before passing of the decree in favour of the respondent no. 1-Gurjant Singh. The suit was filed on 16.04.1996, as such, decree passed in faovur of appellant is not hit by the principle of *lis pendens*. The appellant has acquired title over the suit

property and objections filed by him were to be treated as third party objections, which could not be disposed of except by framing issues regarding title of appellant over the suit property.

4. On giving a careful consideration to submissions of learned counsel for the appellant, I find that only document in favour of the appellant is the collusive decree dated 28.07.1994, which was placed on file before the trial Court. The appellant has no other document to support his claim. Admittedly, alienation of the property in favour of her sons was made by Amarjit Kaur after taking loan from Gurjant Singh on the basis of pronote and receipt dated 15.04.1993. The Courts below have rightly observed that this alienation was with a view to defeat the right of debtor and was fraudulent in nature.

5. On the basis of given facts, no other inference regarding transfer of land by Amarjit Kaur in favour of her sons can be drawn. I find no legal or factual infirmity in the observations recorded by Courts below, calling for any interference in this appeal, which has no merit.

Dismissed.

January 09, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No