

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

**Execution Second Appeal No.13 of 2014 (O&M)
Date of Decision: February 28, 2019.**

Rakesh Kumar Chopra

.....APPELLANT(s).

VERSUS

Hawa Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Kotla, Advocate
for the appellant (s).

Mr. R.A. Sheoran, Advocate
for the respondents No.1 to 7 and 10.

None for respondent No.14.

SURINDER GUPTA, J.

Har Lal (since deceased, now represented by his legal representatives) was a tenant in the shop in dispute. The facts of his litigation with the landlord as enumerated in para 9 of the Order passed by Additional District Judge, Hisar are reproduced as follows:-

“In the present case, the decree holder was a tenant in the suit property and he instituted one suit against his landlord namely Roop Ram seeking a decree for permanent injunction restraining the landlord from dispossessing him forcibly and order of injunction was issued in his favour. The landlord/owner sold the property in favour of defendants No.2 to 4 namely Kiru Ram, Wazir Singh and Sher Singh during pendency of the suit. Decree holder was dispossessed on 25.06.95. The original owner/landlord and subsequent purchasers absented and were proceeded exparte in the suit. Vide

judgement and decree dated 12.03.2005, it was held that plaintiff/decreed holder had been illegally dispossessed and a decree for possession of the suit property was passed in his favour and the decree is sought to be executed in which present objections under Order 21 Rule 97 C.P.C. were filed by objector/respondent alleging that he had purchased the suit property from original defendants No.2 to 4 vide sale deed dated 31.7.97. It was in the knowledge of the plaintiff/decreed holder that he has purchased the suit property, but he did not care to implead him as a defendant and decree has been passed at his back. JDs No.2 to 4 had delivered the possession of the suit property to him in pursuance of the sale deed dated 31.7.97 and he is a bona fide purchaser for valuable consideration and he cannot be dispossessed in execution of the decree. In fact, the JDs No.1 to 4 are in connivance with each other as well as Decree holder and have fraudulently procured the judgement and decree dated 12.3.2005 which is based on wrong facts.”

The objections filed by the appellant were dismissed by the executing Court with the observation that the appellant is a transferee pendente lite. He has his shop of scooter and motorcycle workshop in front of the shop in question and was having knowledge about the litigation between the parties. His plea that he is a bona fide purchaser, was held as not sustainable. The appeal filed by the objector was also dismissed by Additional District Judge, Hisar with the observations in para 10 of the order as follows:-

“However, in my considered opinion, the appellant/objector, has stepped into the shoes of the original landlord or his vendors who had dispossessed the decreed holder from the suit property after institution of

the suit despite an order of injunction in his favour. The sale deed in his favour is hit by principle of lis-pendens and cannot claim himself to be a bona fide purchaser for consideration without notice, as the property was purchased by him during the pendency of the suit and after forcible dispossession of the plaintiff by previous owner. It is well settled that a person who purchases the property during the pendency of suit does not acquire any right better than those which his transferor had. The decree holder/plaintiff was forcibly disposed and a decree for possession stands in his favour and he is entitled to get the possession of the suit property back from any person whoever is in possession. No substantial question arises from the pleadings raised in the objection petition and it was thus not obligatory upon the executing Court to provide any opportunity to the objector to lead evidence and there was no need to frame any issue when the objections are prima-facie frivolous, vexatious and have been filed only to delay the execution. The case law cited by learned counsel for the objector is not applicable to the facts of the case in hand.”

Learned counsel for the appellant-objector admits that the objector is a transferee pendente lite but has argued that he is in fact a bona fide purchaser, as such, the executing Court was required to decide his objections after framing issues, recording evidence and not in a summary manner.

Learned counsel for the respondents No. 1 to 7 and 10 has argued that being a transferee pendente lite, objector is bound by the decree passed in favour of the original owner/landlord. During the pendency of the suit, disputed property was sold by original owner to Kiru Ram, Wazir Singh and Sher Singh. On coming to know of transfer, they were impleaded

as party. Decree holder never came to know of the transfer in favour of objector and was not required to implead him as party as objector stepped into the shoes of judgement debtor and has no better right over the suit property than the judgement debtor.

Admittedly, the litigation between decree holder and Roop Ram regarding the suit property started on 01.05.1995. Plaintiff-decree holder who claims himself to be in possession of the shop in dispute at the rent of ₹500/- per month filed suit claiming relief of permanent injunction to restrain Roop Ram from dispossessing him from the suit property. During the pendency of the suit, Roop Ram sold the suit property to Kiru Ram, Wazir Singh and Sher Singh, defendants No.2 to 4, who dispossessed the plaintiff from the shop in dispute on 25.06.1995. Due to his dispossession, plaintiff also sought possession of the suit property.

Learned Civil Judge Sr. Division decreed the suit of the plaintiff with observations that plaintiff, a tenant in the suit property was wrongly dispossessed despite injunction order dated 01.05.1995 in his favour. During the execution proceedings, appellant filed objection that defendants No.2 to 4, who were owner of the suit property, filed application along with affidavit to Estate Officer, HUDA in favour of objector and the plot in question was re-allotted in his favour vide re-allotment letter No.12894 of 03.09.1997. The possession of the disputed shop was delivered to the objector, who was bona fide purchaser and absolute owner of the same from the date of execution and registration of the sale deed dated 31.07.1997 in his favour.

The objection of the objector was discarded by the executing

Court with the observations as follows:-

“In *Satish Kumar versus Shanty Devi and Ors.2008 (3) LJR-610*, It was held that there is no need to frame an issue where the objections are prima facie frivolous, vexatious and intended to delay the execution has recorded as under:-

The decree has already become final between the parties and this Court cannot go beyond the decree. If the defendant/JD has put in possession any third person in the premises during pendency of suit or after passing the decree, then the decree is also executable against that third person. At this stage, there is no need to frame issue before deciding the objections. So, the application is devoid of any merit and the same is hereby dismissed.”

Learned executing Court observed that the transferee pendente lite stepped into the shoe of original transferor-judgment debtor and is bound by the outcome of litigation and plea of subsequent vendee that he is bona fide purchaser, cannot be accepted. First Appellate Court also discarded the objections of the objector-appellant with the observations in para 10 reproduced above.

Learned counsel for the appellant has again raised the issue that the appellant is a bona fide purchaser of the suit property who was not impleaded as party to the suit, as such, has the right to be heard on his objections on merits, as per the provisions of Order 21 Rule 97 C.P.C.

Order 21 Rule 97 C.P.C. reads as follows:-

“97. Resistance or obstruction to possession of immovable property.- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a

decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

Above provisions do not help the appellant as he has stepped into shoes of judgement debtor and is bound by the decree passed by the Court. Order 21 Rule 99 C.P.C. provides that where any person other than the judgement debtor is dispossessed of immovable property by the holder of a decree for possession of such property, he may make application to the Court complaining of such dispossession. The claim of the appellant-objector does not fall under Order 21 Rule 99 C.P.C. as he is not a third party but has stepped into shoes of judgment-debtor. Rule 102 C.P.C. specifically provides that provisions of Rule 98 and 100 are not applicable for resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit.

Both the Courts below have looked into this aspect and have rightly dismissed the objections filed by the objector holding him transferee pendente lite and bound by the decree passed in this case. I find no legal or factual infirmity in the orders passed by the Court below.

This appeal has no merits. Dismissed.

(SURINDER GUPTA)
JUDGE

February 28, 2019.
Sachin M.

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>