

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

RSA No.4614 of 2012 (O&M)

Date of decision : 28.02.2019

Amrat Singh Chauhan

...Appellant

Versus

Dass Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Alok Jain, Advocate for the appellant.

Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the respondent.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below dismissing the suit filed by the plaintiff on a preliminary issue i.e. the issues raised in the present suit are hit by principle of res judicata.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

It is undisputed that there was a previous litigation between the parties with regard to the suit land in which predecessors-in-interest of the plaintiff were also parties. In the aforesaid suit for possession by way of specific performance of the agreement to sell, the predecessors-in-interest of

the plaintiff namely Naresh Kumar, Jai Ram, Sanjay Singhal and Shiv Kumar were parties. Sanjay Singhal and Shiv Kumar had sold the property in favour of Satesh Yadav who in turn had sold the property to the plaintiff in the present suit vide sale deed dated 16.10.1996.

While deciding the previous suit for possession by way of specific performance of agreement to sell, no doubt ordinarily the Court only determines inter se dispute between the intended seller and intended purchaser and opines about the enforceability of the agreement to sell, however, in the present case, the suit for possession by way of specific performance was contested not only between the intended purchaser and intended seller but also by the predecessors-in-interest of the plaintiff. The issues which were framed in the suit for specific performance are extracted as under:-

- “1. Whether the defendant No.1 entered into an agreement dated 23.8.1986 to sell the suit land to the plaintiff? OPP.*
- 2. Whether the exparte judgment and decree dated 23.1.1991 is illegal, null and void? OPP*
- 3. Whether the plaintiff is still willing to perform his part of contract? OPP*
- 4. Whether the suit of the plaintiff is within limitation of time? OPP.*
- 5. Whether the defendant No.2 is not lessee in possession of the suit land as alleged? OPP*
- 6. Whether the suit is not maintainable in the present form? OPD.*
- 7. Whether an agreement to sell had been entered into between defendant No.1 & Gian Chand on one hand and Baljeet Singh Dagar on the other hand in respect*

of suit land? OPD.

8. *Whether defendants are the bonafide purchaser of the suit land for valuable consideration? OPD.*
9. *Relief.”*

There was issue with regard to validity of ex parte judgment and decree dated 23.01.1991. In fact, the aforesaid judgment and decree is not by the Civil Court but it is passed by a Revenue Court which as per the judgment passed by the Full Bench of this Court in the case of **Shiv Charan Vs. Financial Commissioner, Haryana and others, 2004 (4) RCR (Civil) 543** does not have jurisdiction to grant declaration that someone has acquired ownership being occupancy tenant. It may be noted that Naresh Kumar was minor son of Dalpat who was tenant under the owners. It has come in evidence that Dalpat was having five sons namely Bijender Singh, Rajinder Singh, Padam Singh, Munshi Singh and Naresh. On death of Dalpat, the tenancy was inherited by his sons as joint tenants. As noticed above, Naresh at that time was minor. Remaining four sons of Dalpat surrendered tenancy rights by a registered deed dated 27.05.1987 on receipt of ₹8,750/-. Now, Naresh who was minor at that time claims that he has continued as occupancy tenant on the property and thus become owner by operation of law. Naresh had in fact filed two proceedings, one before the Revenue Authorities as noticed above which resulted into order in his favour on 23.01.1991 and second another suit filed by Naresh on 05.07.2001 which resulted into a decree for 1/5th share of the total land measuring 22 kanals and 6 marlas. In the Civil Suit also, Naresh had claimed that he had become owner by virtue of the conferment of ownership to the occupancy tenants under Punjab Occupancy Tenancy (Vesting of

Proprietary Rights) Act, 1956.

Suit for possession by way of specific performance of the agreement to sell was filed on 14.06.1989 for specific performance of the agreement to sell dated 23.08.1986. In the aforesaid suit, Naresh was also party apart from subsequent vendees. The suit was decreed and learned Court while deciding issue No.2 held that such order passed by the Revenue Authorities is obtained by defendants in connivance with each other. The findings arrived at by the First Appellate Court in para 18 and 19 of the judgment are extracted as under:-

“18. Further the plaintiff has placed on record a copy of order dated 23.1.1991 passed by the Assistant Collector from a perusal of which it reveals that an exparte order was passed in favour of the defendant No.3 Naresh Kumar who had impleaded the defendant No.1 and co-owner Ganesh son of Kalna as party but they had not contested the petition before the Assistant Collector. This order is dated 23.1.1991 i.e. after the execution of the agreement to sell and after the institution of the present suit for possession by way of specific performance of contract. The mere fact that the defendant No.1 had not contested that petition goes a long way to prove that that order was obtained by the defendant No.1 in connivance with the defendant No.3 and this order is not sustainable in the eyes of law. Furthermore, on one hand the defendants have pleaded that Tillo Ram was a lessee in respect of the land in suit and whereas Dalpat (who was recorded as tenant in the revenue record) had surrendered the possession in favour of Tillo Ram i.e. defendant No.2 then how the heirs of Dalpat i.e. Naresh Kumar had acquired the occupancy rights in the land in suit. In the written statement filed on behalf of the defendant

No.1, it has been pleaded that the defendant No.2 had taken the land in suit on lease from the owners and his name is also figuring in the revenue record as lessee then where was the question of conferring ownership rights on defendant No.3 being the LR of deceased Dalpat who himself had allegedly surrendered the possession in favour of Tillu Ram. In this view of the situation, the aforesaid order dated 23.1.1991 (Ex.P11) appears to have been procured in order to defeat the right of the plaintiff to get the sale deed executed and it has no affect on the rights of the plaintiff. It is well established principle of law that non-appearance of a party in the witness box and denying the case of the opponents gives rise to a strong presumption against the party. A reference in this regard can be made to a decision in Sardari Lal Versus Kartar Singh and others, 1998(2) PLJ 55. If the defendant No.3 Naresh Kumar had obtained the aforesaid order rightly then he should have appeared in the witness box to depose against the case of the plaintiff and by not appearing he had suffered a great risk and his non-appearance has given rise to a strong presumption against him. Similarly as other defendants also did not appear to refute the stand of the plaintiff, therefore, their non-appearance in the witness box also gives rise to strong presumption against them.

19. Now the question which is left is that whether the defendants No.5 and 6 are bonafide purchaser for valuable consideration or not. The findings of the learned lower court in this regard under issue No.8 are not sustainable in as much as the learned lower court arrived at the findings in favour of these defendants although there was no evidence on record on behalf of the defendants and the burden of proving the issues in this regard was upon the defendants. As has been stated above, the suit in the trial Court was

being contested on behalf of the defendant No.2 only, therefore, the plaintiff's readiness and willingness to perform his part of the contract could not have been challenged by defendant No.2 as it is well settled law that the readiness and willingness of the plaintiff for performing his part of the contract is only available to the vendor and his LRs and not to the subsequent purchasers. A reference in this regard can be made to a decision in Bhag Ram & Ors Versus Pala Singh & Ors. 1996(1) Civil Court Cases 50 (P&H) and also to a decision of the Hon'ble Supreme Court of India in Jugraj Singh Versus Labh Singh, 1995(1) Civil Court Cases 199. Moreover, it is well established principle of law that where a person claims to be a purchaser for value without notice of the original contract, the burden lies upon him to prove that he fulfills that character. A reference in this regard can be made to a decision in Venkataravanappa and others Versus Dasappa and others AIR 1955 MYSORE-2."

In view of the aforesaid judgment which has become final, both the Courts have recorded concurrent finding that the suit is hit by Rule of res judicata. Learned counsel appearing for the appellant apart from addressing oral arguments has submitted synopsis in which following contentions have been raised which are extracted as under:-

- "A. Revenue Court Ruling was never set aside.*
- B. The landlord-tenant dispute cannot be adjudicated upon in a suit for specific performance.*
- C. The Civil Court had limited jurisdiction in a suit for specific performance in as much as title of the vendor cannot be put to test in the aforesaid suit.*
- D. Naresh and our Vendors were impleaded as party respondent in the suit for specific performance but*

that simplicitor cannot convert a suit for specific performance into a declaratory suit where title can be put to test or contested. Therefore, the decree granted in the aforesaid suit cannot be said to be binding even on Naresh much less on us, being subsequent purchasers.

E. Finding in suit for specific performance can not be enlarged so as to frame a suit for title. Any attempt to bring in 3rd party to the contract in the suit would be hit by Section 15(a) of Specific Relief Act.

(2005) 6 SCC 733, 1995(3) SCC 147

F. Specific performance decree in favour of DH is only a decree without jurisdiction so far as determination of rights of our vendors or Naresh viz a viz its landlord Gian Chand.

G. The Vendee cannot possibly have any right to challenge our right or the title of our vendor on the basis of ATS until and unless, he gets specific performance decree and only thereafter, can he be said to have been possessed with a right and could possibly steps into the shoes.

H. In execution of specific performance decree, only symbolic possession was transferred in execution and that does not affect our right to contest.

I. The adverse findings on our title in the specific performance suit cannot be said to be in any manner binding much less of any persuasive value having the force of constructive res judicata in as much as the same are without jurisdiction and the findings maintained upto Supreme Court can be of no significance in these circumstances.

(2005) 6 SCC 733”

Now let us analyse each of the contention.

As regards the judgment passed by the Revenue Court, the same has already been held to be result of connivance and collusion and ignored by the Court in a suit for possession by way of specific performance of the agreement to sell. Naresh, the predecessor of the plaintiff had claimed his rights on the basis of the aforesaid judgment of the Revenue Court. Therefore, first contention has no substance.

As regards contention (B), it may be noticed that in a suit for specific performance, the Court did not determine landlord tenant dispute. Naresh, predecessor-in-interest of plaintiff was claiming to be the owner of the property and, therefore, there was no adjudication on the landlord tenant relationship. In any case, once the four brothers had surrendered tenancy and at that time Naresh was minor, he, being incapable of cultivating at that time, cannot claim any independent right as a tenant. On the death of a tenant, his children inherit the tenancy as joint tenant. No one can individually claim any exclusive right of tenancy. Hence, second contention also does not have substance.

As regards contentions (C), (D), (E) and (F), it may be noticed that Civil Court was not a Court of limited jurisdiction. Civil Court while deciding a suit for possession by way of specific performance as noticed above had determined right, title or interest of Naresh Kumar, predecessor-in-interest of the plaintiff as there was an issue framed with respect to the rights of Naresh Kumar and adjudicated upon by the Courts. Therefore, the plaintiff cannot be permitted to re-agitate the matter. Through the present suit, plaintiff is also claiming that judgment and decree passed by the First

Appellate Court inter parties dated 20.04.2001 be set aside.

Reference by the learned counsel to Section 15(a) of the Specific Relief Act, also does not advance the case of the plaintiff because Section 15(a) provide that specific performance of the contract may be obtained by any party thereto. However, attention of the Court has not been drawn to any statutory bar which prohibits the Court to determine other issues raised by the parties to the litigation in a suit for possession by way of specific performance of the agreement to sell. Normally, as noticed above, in a suit for specific performance, the Court do not venture into other dispute, however, once the Court has ventured into and decided other disputes and adjudicated upon after granting opportunity to the parties to lead evidence then the party cannot be now allowed to turn around and say that such exercise was without jurisdiction.

Now let us deal with contention No.(g).

As regards contention No.(g), the defendant-respondent is a vendee pursuant to a decree for possession by way of specific performance of the agreement to sell. Entire litigation initiated by Naresh Kumar, predecessor-in-interest of the plaintiff was during the pendency of the suit for possession by way of specific performance of the agreement to sell. The suit for specific performance of the agreement to sell was filed on 14.06.1989 and the entire litigation is during the pendency thereof. Therefore, such orders passed would be governed by Rule of lis pendens. Hence, even contention No.(g) is also without any substance.

Contention No.(h) does not require any detailed discussion because once a person purchases undivided share in the property even if

through decree for specific performance of agreement to sell, he becomes co-sharer and such purchaser would be entitled to take possession after seeking partition of the property.

Still further, there is no substance in the contention of learned counsel for the appellant that the findings arrived at in a previous suit would not operate as res judicata as the same is without jurisdiction. This Court has already discussed that the Court which dealt with the suit for possession by way of specific performance was not a Court of limited jurisdiction. In such circumstances, the findings arrived at in the previous suit shall be binding and cannot be ignored by the Court in the subsequent suit particularly when the issue was directly and substantially in issue in the previous suit. Section 11 of the Code of Civil Procedure debars the Court to permit the party to re-agitate the issue which was directly and substantially in issue in former suit between the same party. The principle behind Section 11 is to bring in finality to the litigation. As noticed, plaintiff in the present suit has also challenged the judgment and decree passed in the former suit which cannot be permitted. If the argument of the learned counsel for the appellant is accepted, there would be no end to the litigation. Parties would keep filing the suits after suits and re-agitate the matters which have already been finally decided in between the same parties.

In the synopsis, learned counsel has referred to two judgments of Hon'ble the Supreme Court reported as (1995) 3 SCC 147, Anil Kumar Singh Vs. Shiv Nath Mishra @ Gadasa Guru, and (2005) 6 SCC 733, Kasturi Vs. Iyyamperumal and others. In both the judgments, Hon'ble the Supreme Court was dealing with a situation when application for adding a

party under Order 1 Rule 10 CPC was filed and adjudicated. In both the judgments, Hon'ble the Supreme Court has held that in a suit for specific performance of the agreement to sell, normally, non parties to the agreement are not required to be impleaded. In the present case, this is not a position. In the former suit which has been finally decided, issue had been framed and decided. The judgments of Hon'ble the Supreme Court does not lay down that such finding in a suit for specific performance is without jurisdiction.

In view of the aforesaid discussions, there is no error in the judgments passed by both the Courts below.

Hence, Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

28.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No