

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

**DATE OF DECISION: 03.07.2019**

**1.)        *SAO NO.64 OF 2015 (O&M)***

*M/S SURAJ CONSTRUCTION AND  
ESTATE PVT. LTD. & ANR.*

*...APPELLANTS..*

*VERSUS*

*CHETNA JAIN AND ORS.*

*...RESPONDENTS..*

**2.)        *SAO NO.16 OF 2017 (O&M)***

*M/S SURAJ CONSTRUCTION AND  
ESTATE PVT. LTD. & ANR.*

*...APPELLANTS..*

*VERSUS*

*AJAY KATARIA AND ORS.*

*... RESPONDENTS..*

**3.)        *SAO NO.61 OF 2016 (O&M)***

*M/S SURAJ CONSTRUCTION AND  
ESTATE PVT. LTD. & ANR.*

*...APPELLANTS..*

*VERSUS*

*SANJAY KATARIA AND ORS.*

*...RESPONDENTS..*

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

**Present: Mr. Adarsh Jain, Advocate,  
for the appellant(s).**

Mr. N.D. Achint, Advocate,  
for respondents No.1 and 2.

Mr. Gaurav Aggarwal, Advocate,  
for respondent No.1 in SAO No.16 of 2017 and  
SAO No.61 of 2016.

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**RAMENDRA JAIN, J. (ORAL)**

Through this common judgment, three above titled appeals filed by the appellants against three separate judgments of the Ist Appellate Court, who, accepted the appeals of respondents-plaintiffs, while setting aside the judgments of trial court are being disposed of. For brevity, the facts are being extracted from SAO No.64 of 2015.

Briefly, respondents-plaintiff in all the three appeals filed separate suits for declaration and permanent injunction against the appellants and proforma respondents claiming themselves to be the owner of plots No.1016, 1921, 1034 measuring 250 sq. yds each, on the basis of allotment by proforma respondents on becoming its members being purchaser from their respective allottees in a colony carved out in the year 1995-97 by respondent No.4, a registered society called as Saraswati Kunj Cooperative House Building Society Ltd., who had purchased around 100 acres of land in the village Wazirabad, District Gurgaon from various owners including respondent No.3 after obtaining licence and construction of roads, sewerage, parks etc. Sale deed was also executed and registered by proforma respondent No.4 in

their favour vide their respective sale deeds. The appellants had obtained a decree for specific performance in their favour by filing two civil suits against respondent No.3 from the court of Additional Civil Judge, Gurgaon vide two judgments and decrees dated 14.12.1999 in their favour on the basis of two alleged agreements dated 20.09.1991, to which they were not party. The said decrees were obtained by the appellants fraudulently and thus, had no binding effect upon them.

Upon notice of the suits, appellants did not choose to contest the same. Hence, trial court, finding no option proceeded them ex-parte. However, after some time appellants moved application under Order 7 Rule 11 CPC for rejection of plaint, which the trial court, after hearing both the sides was accepted. Resultantly, all the three plaints of respondent-plaintiff No.1 were dismissed vide separate orders dated 05.09.2013 passed by Civil Judge (Junior Division), Gurgaon.

Being aggrieved, respondents-plaintiff preferred their respective appeals, which have been accepted by three different courts headed by different presiding officer with similar observation that the plaints of the respondent No.1-plaintiff could not have been rejected under Order 7 Rule 11 CPC.

Learned counsel for the appellants contends that the agreement to sell in favour of the appellants from respondent No.3 was dated 20.09.1991. The appellants had filed suit on 29.09.1994, which was decreed on 14.12.1999. Respondents-plaintiff had purchased their

respective plots during the pendency of litigation. Therefore, their claim was hit by the doctrine of "lis pendens". Considering this aspect of the matter, the trial court rightly rejected the complaints of respondents-plaintiff under Order 7 Rule 11 CPC but the appellate court has erroneously set aside the order of the trial court. Respondents-plaintiff instead of filing separate suits, ought to have availed alternative remedy under Order 21 Rules 97 and 99 CPC. From this angle also, suits of the respondents-plaintiff were not maintainable and thus, were rightly dismissed.

On the other hand, learned counsel for respondents No.1 and 2 submit that the complaint of respondents-plaintiff could not have been rejected in view of alternative prayer that in case judgment and decree dated 14.12.1999 found to have been correctly passed, in that eventuality, they may be delivered peaceful possession of alternative plots. The trial court had erred in dismissing the complaint of the plaintiffs without considering their alternate prayer.

Having given thoughtful consideration to the rival submissions, this Court finds all the three appeals completely devoid of any merit for the reasons to follow:-

The endeavour of the court should always be to impart justice after hearing a person on merit, who has contentious issue to raise, instead of non-suiting him on technical ground. According to the appellants, they were delivered possession, pursuant to judgments and

decree dated 14.12.1999, whereas the claim of respondents- plaintiff is qua plots, duly numbered. Therefore, it is not understandable as to how possession of land in khasras numbers could be delivered to the appellants, when a residential colony had already been carved out by respondent No.4 after obtaining a license from the department of Town and Country Planning, State of Haryana.

For ready reference, the findings of the appellate court are reproduced as here under:-

(i) *Learned trial court again fell in grave error in not giving any reference in the impugned order of the alternative plea of mandatory injunction as sought by the plaintiffs in this plaint, whereby they came up with an improvised plea that if the main relief sought by the plaintiffs cannot be granted, then directions be given to defendant No.4 society to deliver the vacant and peaceful possession of another plot at the place of sold plot of 250 sq. yard and further directions were sought to reserve the plot of similar area for the plaintiffs at the place of the plot in dispute. This was an alternative plea and it also required the trial on this issue. By rejecting the plaint of the plaintiffs, learned trial court rendered the plaintiffs remediless. Even if it is held for argument's sake that the plaintiffs could not have challenged the judgments and decrees in favour of the answering defendants, taking the plea of fraud and collusion, still it was not within the domain of trial court to reject the plaint, inasmuch as, it is clear law on the point that the plaint is to be rejected as a whole and it cannot be rejected in part. Reliance in*

*this regard can be placed on the authority in HDFC Bank Ltd. vs. M/s Gee Kay International 2013 (3) PLR 546 cited by learned counsel for the answering defendants, which goes against the case of his clients, inasmuch as, in cited case there is reference of the authority of Hon'ble Supreme Court in D.Ramachandern vs. R.V. Jankiraman and others (1993) 3 SCC 267 wherein Hon'ble Supreme Court opined that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleadings into several parts and consider whether each of them disclose cause of action. There cannot be partial rejection of plaint or petition. Further Hon'ble High Court in said citation made a reference of another ruling of Hon'ble Supreme Court in case Sudhir G. Angur vs. M. Sanjiv 2006 (2) RCR (Crl.)2 wherein it was held that where there are serious allegations of fraud, forgery, diversion of trust properties, the same cannot be enquired into in a summary manner and the matter can only be gone into by a court.*

*No doubt it is true that in the plaint, the plaintiff is required to set forth the detailed particulars of fraud, forgery, misrepresentation and collusion but it cannot be lost sight of the fact that in this case, there is due reference in the plaint as to how the proceedings were fraudulent and collusive in the civil court on the basis of which civil court decrees were passed. There is clear reference in para 4 of the plaint that no such khasra number 430, 431, 604 to 610 or any other khasra number exist at the spot, as colony has been set up by the society on the land purchased by it. In the execution proceedings, there is no reference of any constructed*

*colony. How, the possession of the land underneath the colony without showing the constructions raised upon it by various house owners could have been given? Again this was a serious issued, which required a trial.*

*Learned trial court completely lost sight of the fact that doctrine of lis pendens is not application when the proceedings between the parties to the suit are pleaded to be collusive. It is so provided under Section 52 of the Transfer of Property Act and as per Section 41 of said Act, bonafide purchaser can take up a plea of he being a bonafide purchaser for valuable, without notice and this plea, in my opinion could not have been summarily rejected in the interface of the broad allegations leveled by the plaintiffs in their plaint."*

Perusal of above findings of the appellant court makes it abundantly clear that the respective complaints of the respondents-plaintiff were illegally rejected by the trial court.

Moreso, since respondents-plaintiff are lawful purchasers of their respective plots, therefore, their claim could not have been negated by the trial court on technical ground under Order 7 Rule 11 CPC, without going into the merits of the case.

In view of the discussion made above, this Court finds no illegality and infirmity in the separate impugned orders of the appellate court(s), setting aside the judgments of trial court. Hence, all the three appeals are dismissed.

Parties are directed to appear before the trial court on

29.07.2019, with direction to the trial court to proceed further in

accordance with law.

03.07.2019  
*sonika*

(RAMENDRA JAIN)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No