

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1143 of 2020 (O&M)

Date of Decision: 19.08.2020

Ishwar Singh

... Appellant(s)

Versus

Naresh Kumar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the appellant.

Anil Kshetarpal, J.

C.M.-3601-C-2020

As prayed, the present application is allowed and the applicant/appellant is exempted from filing the certified copy of the judgment & decree dated 16.08.2018 and true typed copies of the judgments & decree dated 16.08.2018 and 03.12.2017 and the grounds of appeal dated 03.12.2019.

RSA-1143-2020

The plaintiff/appellant has filed the regular second appeal against the concurrent findings of fact arrived at by the learned Courts below while dismissing the suit filed for declaration to the effect that the judgment & decree dated 01.02.2007, passed by the learned Civil Court in the suit “Raj Kumar v. Shri Krishan” is illegal, null and void with consequential relief of permanent injunction.

Some facts are required to be noticed. Shri Krishan, defendant

on 08.01.1997 in favour of Raj Kumar, defendant No.3 and delivered physical possession thereof. However, Shri Krishan did not perform his part as required under the agreement to sell, forcing Raj Kumar to file a suit on 01.05.1998 against Shri Krishan for specific performance of the agreement to sell. Shri Krishan is alleged to have sold the suit property in favour of Naresh Kumar on 06.05.1998, who in turn, sold the property in favour of the plaintiff i.e. Ishwar Singh on 23.10.1998. The suit for specific performance of the agreement to sell filed by Raj Kumar against Shri Krishan was decreed on 01.02.2007. In the execution petition, through the process of the Court, the sale deed has been executed in favour of Raj Kumar. Ishwar Singh, as notice above, has filed the present suit challenging the judgment & decree dated 01.02.2007 on the ground that the said judgment & decree is the result of collusion between defendant No.2 and 3.

Both the learned Courts below, on appreciation of the evidence, have concurrently found that the sale in favour of the plaintiff-appellant is governed by the doctrine of *lis pendens* as the sale deed in his favour dated 23.10.1998, executed during the pendency of the previous suit. In fact, the sale deed in favour of defendant No. 2 (the plaintiff's vender) dated 06.05.1998, is also during the pendency of the previous suit, hence, governed by the doctrine of *lis pendens*.

Both the learned Courts below have also found that the plaintiff has failed to produce a copy of the sale deed dated 06.05.1998. It has also been found that defendant No.3 (the plaintiff in the previous suit) was delivered possession of the suit property at the time when the agreement to sell was entered and this fact is admitted by the plaintiff while appearing

defendant No.2, has admitted that the plaintiff was aware of the pendency of the previous suit i.e. “Raj Kumar v. Shri Krishan”. Still further, both the Courts below have also found that the plaintiff has failed to prove that he paid any sale consideration while getting the sale deed executed on 23.10.1998.

This Court has heard learned counsel for the appellant at length. Learned counsel has submitted that the previous suit was the result of the collusion between defendant No.2 and 3. He further submitted that the plaintiff/appellant was not impleaded as a party in the previous suit and therefore, the aforesaid decree is not binding on the plaintiff.

This Court has considered the submissions. At the outset, it must be noticed that the learned trial Court in para 2c has noted that defendant No.3 had filed a suit for specific performance of agreement to sell on 01.05.1998. Learned counsel for the appellant did not dispute this fact. If that be so, then the sale deed executed by Shri Krishan, defendant No.2, in favour of Naresh Kumar and the subsequent sale deed executed by Naresh Kumar in favour of the plaintiff are hit by the doctrine of *lis pendens*. Still further, both the learned Courts below, on appreciation of the evidence, have found that that the plaintiff has failed to prove collusion between defendant No.2 and 3. Rather, the learned Courts below have found that the plaintiff has colluded with defendant No.1 and 2. Even in this suit, defendant No.1 and 2 filed a written statement admitting the claim of the plaintiff. In the absence of any cogent evidence to the effect that the previous suit was the result of collusion between defendant No.2 and 3, this Court does not find any reason to interfere with the concurrent finding of fact.

Next argument of learned counsel for the appellant also

deserves to be rejected as the sale in favour of the plaintiff is proved to be during the pendency of the previous suit and therefore, hit by the doctrine of *lis pendens*. Thus, the sale deed executed in favour of the plaintiff becomes subservient to the result of the previous suit. Still further, the plaintiff has failed to produce the sale deed dated 06.05.1998 in favour of his vendor. The plaintiff has also failed to lead any cogent evidence to prove the payment of the sale consideration to Naresh Kumar, his vendor.

Keeping in view the aforesaid facts, the non-impleadment of the plaintiff in the previous suit would not have any adverse impact particularly when the sale deed executed in his favour is governed by the Rule of *lis pendens*. Still further, the plaintiff himself has admitted that defendant No.3 is in possession of the property since the date of agreement to sell in his favour. Further, the plaintiff and defendant No.1 and 2 are the residents of the same village. Both the learned Courts below have found that the plaintiff was in knowledge of the agreement to sell executed in favour of defendant No.3 as well as the pendency of the suit. Keeping in view the aforesaid facts, the plaintiff was not a necessary party to the previous suit.

In view of the aforesaid discussion, this Court has come to the conclusion that the plaintiff has failed to make out any ground for interference in the judgments of the courts below. Hence, the Regular Second Appeal is dismissed in *limine*.

(Anil Kshetarpal)
Judge

August 19, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No