

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

**RSA No.420 of 2021 (O&M)
Reserved on : 20.07.2021
Pronounced on: 10.08.2021**

Sukhjit Singh	Versus	... Appellant
Rakesh Kumar		... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Chetan Bansal, Advocate, for the appellant.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J.

The defendant-appellant is in appeal against the judgment of the Civil Judge (Jr.Divn.) Dasuya dated 18.01.2016 which has been upheld by the Lower Appellate Court at Hoshiarpur on 12.02.2021. Resultantly, the suit for declaration to the effect that the judgment and decree dated 02.01.2009 (Exs.P-3 & P-4) have been held to be null and void qua land measuring 2 Kanals 10 Marlas out of the land measuring 14 Kanals 11 Marlas, bearing Khasra Nos.198(6-6), 200(8-5). The suit for joint possession of the land in question has also been decreed.

Counsel for the appellant has mainly argued that there was an agreement to sell in favour of the appellant with Harjinder Singh dated 02.09.2004 (Ex.D-1) and therefore, the suit having been decreed on 02.01.2009, the sale would relate back to operate from the said date in his favour and therefore, the Courts below were not justified in setting aside the said judgment and decree. It was, accordingly, contended that there was no need for the appellant to challenge the sale deed dated 16.07.2007

in favour of the plaintiff which had been executed in his favour by one Gopal Krishan who was further purchaser by Harjinder Singh, the original landowner.

Counsel has, thus, relied upon judgments passed by this Court in **Smt. Madhu Sharma Vs. N.K.Mair & others 2018 (4) RCR (Civil) 881** and **Gurmit Singh & others Vs. Inderjit Singh 2018 (2) PLR 685**, to buttress his argument.

In order to appreciate the controversy, it is to be noticed that the agreement to sell was executed by Harjinder Singh in favour of the present appellant-defendant on 02.09.2004 (Ex.D1) for land measuring 25 Kanals 1 Marla out of which the disputed portion of land measuring 2 Kanals 10 Marlas figures. Prior to the litigation initiated by appellant-Sukhjit Singh against Harjinder Singh on 01.04.2008 the sale deed was executed by Harjinder Singh in favour of one Gopal Krishan on 16.07.2007 for land measuring 2 Kanals 10 Marlas and the revenue records were changed in his favour in the Jamabandi for the year 2002-2003. As noticed, the suit filed by the present appellant for specific performance against Harjinder Singh was on 01.04.2008. During the pendency of the suit, Gopal Krishan had sold the land to the plaintiff-respondent on 10.12.2008 and put him in possession of the same. In the meantime, the suit filed by the appellant was decreed on 02.01.2009 and symbolic possession was delivered by execution of the degree on 02.11.2011. It was, at this point of time, the plaintiff alleged that it came to his knowledge the factum of decree dated 02.01.2009 and he initiated

the present suit on 11.09.2013, which has been decreed.

A perusal of the paperbook would go on to show that the following issues were framed by the Trial Court:

- “1. Whether the plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the suit of the plaintiff is beyond period of limitation? OPD
4. Whether the suit of the plaintiff is bad for non joinder of the necessary parties? OPD
5. Whether the plaintiff is estopped from filing this suit by his act and conduct? OPD
6. Whether no cause of action arose to the plaintiff to file this suit? OPD
7. Relief.

Thereafter issues were framed on 12.10.2015 as under:

- 1-A. Whether the alleged sale deed dated 10-12-2008 is hit by provisions of lis pendences under section 52 of the TP Act? OPD
- 1-B. Whether the defendant is bonafide purchaser as per the sale deed dated 10-12-2008?OPD”

The plaintiff and the defendant themselves examined each other and placed the material evidence on record. Admittedly, the sale deed in favour of Gopal Krishan was executed on 16.07.2007, prior to the initiation of the suit against Harjinder Singh by the present appellant, which was only filed on 01.04.2008. The title, thus, had already passed to Gopal Krishan who, thereafter, had become absolute owner and being unaware of the agreement in favour of the present appellant by his vendor. It has also come on record that Gopal Krishan executed the sale

deed dated 10.12.2008 (Ex.P-9) in favour of the plaintiff-respondent and in pursuance of the sale deed in his favour, the revenue record had also been corrected in favour of Gopal Krishan. Thus, at the time of filing the suit for specific performance, the entry of the name of Gopal Krishan was already in the revenue record and neither he was made party. Gopal Krishan further sold the land measuring 2 Kanals 10 Marlas on 10.12.2008 (Ex.P-9) to the respondent-plaintiff, who is, thus, a bona fide purchaser of the said land, being unaware of the litigation which was pending. It is only when possession was taken through Court proceedings on the basis of the decree against Harjinder Singh, he became aware and filed the suit challenging the judgment and decree dated 02.01.2009 (Ex.P3 & Ex.P4).

The Courts below have rightly repelled the argument that the sale during the pendency of the earlier suit would be hit by principles of lis-pendence under the additional issue No.1-A. The land had already been sold to Gopal Krishan and the plaintiff had purchased the land from him and mutation had already been entered in the name of Gopal Krishan and a note was present in the Jamabandi for the year 2002-2003 (Ex.P-3). Thus, it was in the notice to the defendant-appellant but inspite of that, he preferred not to implead Gopal Krishan as a party. In such circumstances, this Court is of the opinion that the findings recorded by the Courts below do not suffer from any infirmity whereby it has recorded that the plaintiff was the bona fide purchaser of the land in question under additional issue No.1-B and was entitled for the

declaration and that the sale deed dated 10.12.2008 could not be held to be hit by principles of lis-pendence.

Reliance upon the judgments Smt.Madhu Sharma (supra) is without any basis. In the said case, the appeal of the plaintiffs were allowed on the ground that they were vendees from a person who had entered into an agreement to sell prior in point of time. The subsequent agreement which was in favour of the respondent-defendant, had been executed by the original vendor and his suit had been decreed whereas their application for impleading the purchasers as party was dismissed. Similarly, the objections were also dismissed by the Executing Court. The suits filed on the strength of the sale deeds executed were initially dismissed but decreed in appeal by holding that the rule of lis-pendence would not apply as the defendant's rights would not be larger than of his vendor who was bound by the agreement which had been entered into before filing of the suit. The sale deed having been executed on the strength of the first agreement entered by the vendor and therefore, they would relate back to the date of agreement. Thus, in substance, the sale deeds in favour of the plaintiffs were held to be in preference over the suit for specific performance which had been decreed in favour of the defendant-appellant against the original vendor. Therefore, the said judgment would not be applicable to the facts and circumstances of the present case.

Similarly, reliance upon Gurmit Singh (supra) would be of no help. In the said case, the defendant-appellants' appeal was dismissed

against the decree of specific performance wherein a finding was recorded that the sale deed executed in favour of the subsequent purchasers were with the sons of the sister of defendant No.2 and were collusive and therefore, did not require to be challenged. A finding had already been recorded that the plaintiff was already in possession as a prospective vendee, as per the revenue record and therefore, the agreement to sell was held to be proved, which was further validated by the opinion of the handwriting expert and reliance upon the said judgment is, thus, misplaced.

Resultantly, keeping in view the above discussion, no case is made out for interference with the concurrent findings of the Courts below and accordingly, the present appeal is dismissed in limine.

10.08.2021

sailesh

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No