

CR-5673-2008 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5673-2008 (O&M)
Reserved on :- 29.03.2023
Date of Decision : 11.04.2023

Vindu Goenka

....Petitioner

VERSUS

Jai Narain and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Shailendra Jain, Sr. Advocate with
Mr. Munish Sharma, Advocate for the petitioner.

Mr. Anupam Gupta, Sr. Advocate, with
Mr. Bhavnik, Advocate for respondent Nos.5 to 8.

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ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been preferred challenging the orders dated 23.07.2008 and 18.08.2008 dismissing the objection petitions filed by the petitioner herein.

A brief history of the case needs to be noted here before advertng to the merits of the matter. On 03.04.1984 Dhan Singh s/o Kalu Ram executed an agreement to sell in favour of Jai Narain etc., the respondents herein, for a sale consideration of Rs.4.35 Lakhs. The agreement stated that Rs.6,000/- had been paid at the time of signing of the agreement to sell and Rs.1.74 lakh already stood paid prior to the agreement. The total land involved in the agreement to sell was 116 kanals

1 marla i.e. $1/3^{\text{rd}}$ share of 348 kanals and 4 marlas situated in the revenue estate of village Wazirpur, Tehsil and District Gurgaon. After the execution of the alleged agreement to sell dated 03.04.1984, Dhan Singh sold land measuring 20 kanals out of his share of 116 kanals and 1 marla to Rampat vide registered sale deed dated 11.03.1986. On 16.08.1988 a civil suit was filed for specific performance of the alleged agreement to sell dated 03.04.1984 by Jai Narain etc., the plaintiff-respondents herein, against Dhan Singh respondent No.9 herein. It is apt to note that in the written statement filed by Dhan Singh no disclosure was made regarding 20 kanals of land having been sold to Rampat vide sale deed dated 11.03.1986 and hence Rampat was not impleaded as a party. Subsequently, Rampat vide sale deed dated 30.06.1989 sold 20 kanals of land in favour of Tej Ram. Tej Ram vide sale deed dated 27.11.1989 sold 20 kanals of land to Madhulika. On 21.09.1994 ex-parte judgment and decree was passed in favour of Jai Narain etc. in the suit for specific performance. It is apt to note here that though the suit was filed for specific performance of agreement to sell dated 03.04.1984 as well as for delivery of possession, however, the judgment and decree was passed only granting specific performance of agreement to sell dated 03.04.1984 and no decree qua possession was passed. On 31.08.1995 an execution petition was filed by Jai Narain against judgment-debtor Dhan Singh (respondent No.9 herein) wherein it was prayed that the plaintiff decree-holders (respondents herein) be granted a decree for specific performance of the agreement to sell dated 03.04.1984 on depositing of balance sale consideration as well as for possession. During the pendency of the execution petition, vide sale deed dated 13.12.1995 Madhulika sold 9

kanals out of 20 kanals to Vindu Goenka the present petitioner. In the execution petition, on 17.08.1998 the sale deed was executed through the agency of the Court in favour of Jai Narain etc. Thereafter, it was brought to the notice of the Court that the judgment-debtor Dhan Singh was not in possession of the suit land and that there were 21 purchasers of the said land. Accordingly, the decree-holders filed an application for delivery of possession against 21 purchasers including the petitioner herein. The purchasers mentioned at Sr. Nos.3, 17, 19 and 20 put in appearance and the remaining remained unserved. On 05.08.2006 a statement was made by the learned counsel for the decree-holders that the impleadment of the subsequent purchasers was unnecessary and there was no requirement to summon them. The said fact is noticed in the order dated 07.08.2006 passed by the Executing Court. Objections were filed by the petitioner which were dismissed vide the impugned order dated 23.07.2008. The appeal of the petitioner was also dismissed vide order dated 18.08.2008.

Learned senior counsel appearing on behalf of the petitioner would contend that without going into the detailed objections raised by the petitioner, the Executing Court has dismissed them only on the ground of the petitioner having purchased the property *lis pendens*. Learned counsel would further contend that out of the 116 kanals 1 marla of land Dhan Singh sold 20 kanals to Rampat on 11.03.1986 and, therefore, on the date of passing of judgment and decree dated 21.09.1994 Dhan Singh was not even the owner of land measuring 116 kanals 1 marla. It is submitted that the petitioner herein has purchased the land from Madhulika who in turn had purchased it from Tej Ram and Tej Ram had purchased it from Rampat. It

is further the contention of the learned counsel that without going into the question whether the sale in favour of Rampat would be hit by the principles of *lis pendens*, the Executing Court erred in dismissing the objections filed by the petitioner.

Per contra, learned senior counsel appearing on behalf of respondent Nos.5 to 8 would contend that the principles of *lis pendens* would apply in the present case and has further placed reliance on the judgment of the Supreme Court in the case of **Guruswamy Nadar Vs. P. Lakshmi Ammal (D) through LRs & Ors. [2008 (5) SCC 796]** to support his plea that the principle of *lis pendens* will be applicable as the sale has taken place after the filing of the suit.

I have heard learned senior counsel for the parties.

In the present case the petitioner filed her objections on the ground that her rights flow from the sale in favour of Rampat vide sale deed dated 11.03.1986 which was prior to the filing of the civil suit. Rampat became owner of land measuring 20 kanals by way of sale deed dated 11.03.1986 which was never challenged by anyone and, thereafter, the subsequent vendee acquired a right on the basis of their respective sale deeds. On the day the suit was filed i.e. 16.08.1988, Dhan Singh was not even owner of land measuring 116 kanals 1 marla since 20 kanals stood sold by him in favour of Rampat vide sale deed dated 11.03.1986. The Executing Court without going into the objections in detail has summarily dismissed them holding that the sale in favour of the petitioner was hit by *lis pendens*. The question as to whether Rampat had a good title on the basis of the sale deed dated 11.03.1986 and whether Dhan Singh actually had any

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right, title or interest in the entire 116 kanal 1 marla of land having sold 20 kanals in favour of Rampat vide sale deed dated 11.03.1986, would be a question required to be gone into. The judgment relied upon by the learned counsel for the respondent Nos.5 to 8 would have no applicability in the present case inasmuch as the property therein was purchased during the pendency of the suit. However, in the present case the sale in favour of Rampat, from whom the right in favour of the petitioner flows, was prior to the filing of the suit. It is also apt to note that Dhan Singh chose not to disclose in the civil suit that he had sold 20 kanals in favour of Rampat who was then never impleaded as party.

In view of the above, the present revision petition is allowed. The impugned orders dated 23.07.2008 and 18.08.2008 are set aside and the matter is remanded to the Executing Court for deciding the objections afresh in accordance with law.

It is made clear that any observation made herein-above shall not be treated as an expression of opinion on the merits of the case.

11.04.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO