

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CR-4248-2018
Reserved on: 20.09.2023
Date of decision: 26.09.2023

MAM KAUR

..Petitioner

Versus

DAYA RAM AND ANOTHER

..Respondents

2. CR-4463-2018

BARHMA DEVI

..Petitioner

Versus

DAYA RAM AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prashant Singh Chauhan, Advocate
for the petitioner (in CR-4248-2018)
for respondent No.2 (in CR-4463-2018).

Mr. Nitin Sansanwal, Advocate
for Mr. Sudhir Rana, Advocate
for the petitioner (in CR-4463-2018)
for respondent No.2 (in CR-4248-2018).

Mr. Ajit Kumar Sharma, Advocate
for Mr. R.D. Yadav, Advocate
for respondent No.1 (in CR-4248 & 4463-2018).

ANIL KSHETARPAL, J(Oral)

1. With the consent of the learned counsel representing the parties,
CR-4248-2018 and CR-4463-2018 shall stand disposed of by a common
order. Both these revision petitions have been filed in order to challenge the
correctness of the judgment passed by the learned First Appellate Court on
01.05.2018 while deciding the miscellaneous Civil Appeal No.50 of 2016.

2. In order to comprehend the issue that requires adjudication, the relevant facts, in brief, are required to be noticed.

3. Late Sh. Shera was the predecessor in interest of the plaintiffs as well as defendant No.2 to 5. He had left behind six class I heirs including a widow, two sons and three daughters. On his death, the property was mutated in favour of all the class I heirs under Section 8 of the Hindu Succession Act, 1956 (hereinafter referred to as the "1956 Act"). Smt. Phula, widow of late Sh. Shera executed a Will in favour of plaintiff No.1 with respect to her 1/6th share inherited from late Sh. Shera. Thereafter, Smt. Savitri daughter of late Sh. Shera transferred her 1/6th share in favour of plaintiff No.1 vide registered transfer deed dated 19.07.2007. On 31.12.2007 Smt. Barhma Devi another daughter of late Sh. Shera sold 10 kanal land to Smt. Sheela, who was an outsider in the family of late Sh. Shera. This step on the part of Smt. Barhma Devi prompted two sons and widow of late Sh. Shera to file the suit for grant of decree of declaration claiming that the property is the ancestral joint hindu and coparcenary property and therefore, the daughters of late Sh. Shera has only 1/20th share each. On 25.04.2008, in that suit, defendant No.1 and 5 were proceeded against ex parte, whereas, defendant No.3 and 4 entered appearance. On that day, defendant No.2 (Smt. Barhma Devi) was not served. The Court ordered the parties to maintain status quo regarding alienation while issuing summons to defendant No.2 for 28.05.2008. On 28.05.2008, defendant No.2 appeared and the injunction was extended, which continued upto 26.08.2011. Smt. Barhma Devi further sold 7 marla land vide registered sale deed dated 30.04.2010 in favour of Smt. Mam Kaur for Rs.1,68,000/-. The total land inherited from late Sh. Shera

was 70 kanal and 9 marlas. It may be noted here that the civil suit filed by the plaintiffs was ultimately dismissed by the trial Court, which in the first appeal was affirmed by the learned First Appellate Court. Even, the second appeal filed by the plaintiffs has been dismissed vide judgment dated 04.09.2023. These two revision petitions are arising from the proceedings filed by the plaintiffs under Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908 (hereinafter referred to as the “CPC”). The plaintiffs assert that Smt. Barhma Devi in violation of injunction order has sold 7 marla land vide sale deed dated 30.04.2010 and therefore, not only she is liable to be punished but the sale deed is also required to be declared illegal. Separate proceedings were held by the Court. The Court of first instance on appreciation of evidence dismissed the application, however, the First Appellate Court has reversed the order passed by the trial Court while sentencing Smt. Barhma Devi to civil imprisonment for a period of two weeks and the sale deed dated 30.04.2010 has been set aside being non-est and illegal. This order has prompted Smt. Barhma Devi as well as Smt. Mam Kaur to file two separate revision petitions.

4. This Bench has heard the learned counsel representing the parties at length and with the able assistance perused the paperbooks.

5. On the one hand, the learned counsel representing Smt. Mam Kaur, the subsequent vendee submits that she was not a party to the suit and therefore, a sale deed in her favour could not have been set aside.

6. On the other hand, the learned counsel representing Smt. Barhma Devi contends that the First Appellate Court has not recorded any

finding that she willfully disobeyed the order of temporary injunction and therefore, the order is perverse.

7. They have also relied upon the following judgments:-

“i. Darshan Singh Vs. Sadha Singh and others, Civil Revision No.1170 of 1981, decided on 24.01.2002.

ii. Mota Singh Vs. Sukhdev Singh, Civil Revision No.3432 of 1985, decided on 11.03.1986.

iii. Bhagwan Dass Vs. Jai Kishan and others, FAO No.9524 of 2014, decided on 06.02.2017.

iv. Jai Parkash and others Vs. Kapoor Singh, Civil Revision No.5654 of 2019, decided on 16.12.2019.

v. Rachhpal Singh Vs. Gurdarshan Singh, Civil Revision No.2331 of 1983, decided on 10.07.1984.

vi. Babu Lal Vs. Deep Chand and others, Civil Revision No.7218 of 2013, decided on 27.01.2016.

vii. State of Bihar Vs. Rani Sonbati Kumari, Civil Appeal No.83 of 1956, decided on 20.09.1960.”

8. On the other hand, the learned counsel representing the respondents submits that the violators of the injunction order should not be spared as the dignity of the Court is required to be maintained. He submits that the violators should not be let off lightly for not obeying the Court orders.

9. After having analyzed the arguments of the learned counsel representing the parties, the Court now proceeds to consider the arguments of the learned counsel representing the parties.

10. Order XXXIX Rule 2-A of the CPC, is extracted as under:-

“2A. Consequence of disobedience or breach of injunction.— (1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court

granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."

11. Before the amendment in the year 1976 in the CPC, the *pari materia* provision existed in Order XXXIX Rule 2(3) of the CPC. A Five Judge Bench in **State of Bihar Vs. Rani Sonabati Kumari, AIR 1961 SC 221**, held that the proceedings under Order XXXIX Rule 2(3) of the CPC have a punitive aspect, however, they are in substance designed to effect the enforcement or to execute the order. On the comprehensive reading of Order XXI Rule 32 of the CPC, the Court held that Order XXXIX Rule 2(3) of the CPC is in essence only the mode for enforcement or effectuation of an order of injunction. The relevant discussion in the aforesaid judgment is extracted as under:-

"Learned Counsel laid considerable stress on the proceedings under O. 39, r. 2(3) being quasi-criminal, in an attempt to establish that the State could not be proceeded against for such a criminal wrong. Though undoubtedly proceedings under Order 39, Rule 2(3), Civil Procedure Code, have a punitive aspect-as is evident from the condemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the Civil Procedure Code for the execution of a decree for a permanent injunction. Order 21, Rule 32 sets out the method by which such decrees could be executed-and cl. (1) enacts-" where the party against whom a decree..... for an injunction has been

passed, has had an opportunity for obeying the decree and has willfully failed to obey it, the decree may be enforced, in the case of a decree for an injunction by his detention in the civil prison, or by the attachment of his property or by both Clauses 2 and 3 of this rule practically reproduce the terms of Clauses 4 and 3 respectively of Order 39, Rule 2, and the provisions leave no room for doubt that Order 39, Rule 2(3) is in essence only the mode for the enforcement or effectuation of an order of injunction. While on the provisions of Order 21, Rule 32, it may be pointed out that learned Counsel for the State does not contend that a State Government against whom a decree for a permanent injunction has been passed is not liable to be proceeded against under this provision of the Code in the event of the decree not being obeyed by them. No doubt the State Government not being a natural person could not be ordered to be detained in civil prison, On the analogy of Corporations; for which special provision is made in Order 39, Rule 5, but beyond that,, both when a decree for a permanent injunction is executed and when an order of temporary injunction is enforced the liability of the State Government to be proceeded against appears to us clear. The third point urged lacks substance and is rejected.”

12. A Division Bench of this Court in **Rachhpal Singh Vs. Gurdarshan Singh, AIR 1985 P&H 299**, held that if ultimately the suit in which the temporary injunction was granted is dismissed, then the aforesaid injunction order merges in the final order and therefore, it is not correct to punish someone under Order XXXIX Rule 2-A of the CPC after the suit was dismissed.

13. However, the Hon'ble Supreme Court in **Tayabhai M. Bagasarwalla Vs. Hind Rubber Industries Pvt. Ltd. (1997) 3 SCC 443**, held that even if ultimately it is held that the Civil Court has no jurisdiction to entertain and try the suit, still the violators can be punished by the Civil Court under Rule 2-A of Order XXXIX. In that case, the restitution was ordered and one month sentence was affirmed.

14. It may be noted here that in **Surjit Singh Vs. Harbans Singh, (1995) 6 SCC 50**, the Court refused to allow application under Order XXII Rule 10 of the CPC to become an assignee and therefore, become party in the suit on the ground that the sale in favour of the applicant was in violation of the injunction order. Similarly, in **Jehal Tanti Vs Nageshwar Singh, (2013) 14 SCC 689**, the Supreme Court remanded the matter back to the High Court to reconsider the matter as the sale was made in violation of the injunction order and therefore, the substantial question of law arose. In this case, the Supreme Court referred to the judgment in **Vidur Impex and Traders Pvt. Ltd. Vs. Tosh Apartments, (2012) 8 SCC 384**. In **Delhi Development Authority Vs. Skipper Construction Company (P) Ltd., (1996) 4 SCC 622**, the Supreme Court held that despite the repeated extensions for payment of the price of the plot, the builder completed the construction and collected a huge amount by selling the apartments. In those facts, the Supreme Court in exercise of powers under Article 129 and 142 ordered six months imprisonment and in the peculiar facts of the case ordered refund of the money to the purchasers.

15. The learned First Appellate Court has relied upon the judgment passed in **Kanwar Singh Saini Vs. High Court of Delhi, (2012) 4 SCC 307**. In this case although there was no interim order, however, the undertaking was given. Ultimately, the suit was decreed. The Court held that proceedings under Order XXXIX Rule 2-A of the CPC itself was not maintainable because the suit was finally decided. The First Appellate Court has also relied upon the judgment passed in **Palitana Sugar Mills Pvt. Ltd. and another Vs. Smt. Vilasiniben Ramchandran, (2007) 15 SCC 218**. In that

case, the Supreme Court in its exercise of powers under the Contempt of Courts Act, 1971, and under Article 142 censured the officers.

16. Setting aside of sale deed in absence of the finding that the vendee was having knowledge of the injunction order is not appropriate. In this case, the First Appellate Court has held that Smt. Mam Kaur, the vendee was not a party to the suit, however, sale in her favour is governed by Section 52 of the Transfer of Property Act, 1882 (rule of *lis pendens*). Thus, there is no finding that the aforesaid injunction order was in the knowledge of Smt. Mam Kaur. Moreover, order granting the temporary injunction is operative during the pendency of the suit. Ultimately, the suit was dismissed. Thus, the cloud of uncertainty on the validity of the sale deed, if any, ceased to exist, once the suit was dismissed. The learned counsel representing the parties have failed to draw the attention of the Court to any statutory provision that required setting aside of the registered sale deed. Ultimately, proceedings under Order XXXIX Rule 2-A are for the enforcement of the order passed. The vendee is not at fault. In any case, the sale deed of any immovable property is a result of an agreement between the parties, which is ultimately registered. It can be set aside only on the grounds on which the contract can be set aside including coercion, undue influence, fraud, misrepresentation or mutual mistake of the parties as to the matter of fact or effect of mistake as to law or where the consideration and objects are unlawful. At the most, the validity can be examined under Section 23 of the Indian Contract Act, 1872. The question that arises for adjudication is “whether it would result in an agreement, which is forbidden by Court for

the time being and would it defeat the provisions of any law or is it opposed to public policy?

17. This Court has not observed that no sale under any circumstances can be set aside. However, before setting aside the sale deed, the Court is required to come to a definite finding that the vendee was involved and the sale deed if allowed to stand shall be opposed to public policy. In the appropriate cases, the Court can pass orders, however, in the facts of this case, this Court does not find it appropriate to set aside the sale deed particularly when the sale deed is only with respect to 7 marla land, whereas, the total suit land was 70 kanal and 9 marlas. In terms of percentage, the sale deed would translate into roughly 0.5% of the total suit land. Moreover, there is no finding that Smt. Barhma Devi willfully disobeyed the injunction order and she deliberately sold the property. In this case, even the First Appellate Court has not held that Smt. Barhma Devi willfully disobeyed the injunction order. Before, a punishment order is passed, disobedience of injunction has to be willful in order to be punishable. The respondents have failed to place on record material to prove that Smt. Barhma Devi willfully disobeyed the Court order.

18. Keeping in view the aforesaid facts and discussion, both the revision petitions are allowed. The impugned order passed by the learned First Appellate Court is set aside.

19. All the pending miscellaneous applications, if any, are also disposed of.

September 26th, 2023

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No