

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

RSA-1132-1987(O&M)
Date of decision: 11.08.2023

SURINDER SINGH & ORS.

..Appellants

Versus

MOHINDER SINGH & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Jindal, Advocate
& Mr. Pankaj Gautam, Advocate
for the appellants.Mr. Kulwant Singh, Advocate
for respondents.**ANIL KSHETARPAL, J(Oral)**

1. This second appeal has been filed by defendants No.8, 9 and 10.

Respondent-Sh. Mohinder Singh filed a suit for grant of decree of permanent injunction restraining the defendants from selling, mortgaging or creating any charge in favour of the third party during the pendency of the suit.

2. In substance, the plaintiff claims that Sh. Nihala Singh son of Sh. Bhola was owner of 159 kanal 1 marla land located in village Sodhi, District Kurukshetra, whereas, the plaintiff Sh. Mohinder Singh was the owner of 29 kanal and 12 marlas land in village Bairsal, District Karnal. Sh. Nihala executed a general power of attorney in favour of his son Sh. Gurcharan Singh. Subsequently, Sh. Gurcharan Singh executed a registered exchange deed dated 04.09.1970, to exchange his father's land measuring 159 kanal and 1 marla with that of land owned by Sh. Mohinder Singh measuring 29 kanal and 12 marlas. He also alleged to have additionally received amount of Rs.5,393/-. Subsequently, Sh. Gurcharan Singh was

allegedly murdered, whereas, Sh. Nihala died. Sh. Mohinder Singh filed a suit with respect to the land located at village Sodhi. The trial Court dismissed the suit while observing that the aforesaid power of attorney was never acted upon. The First Appellate Court noticed that the land located at village Sodhi has already been sold as well as exchanged by the legal representatives of Sh. Nihala and observed that the suit is rendered infructuous. However, the First Appellate Court without their being any challenge to the sale deed or exchange deed, which was subsequently executed by heirs of Sh. Nihala with respect to the land located in village Sodhi, set aside the sale deed as well as the exchange deed on the ground that these are executed in violation of the interim order of status quo.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. The learned counsel representing the appellant submits that legal representatives of late Sh. Mohinder Singh has already sold his 29 kanal and 12 marlas land located at village Bairsal, which originally belonged to Sh. Mohinder Singh prior to exchange in favour of the appellants.

5. The learned counsel representing the respondent does not dispute that fact.

6. However, the learned counsel representing the appellant contends that even if the sale deeds/exchange deeds were executed in violation of the injunction order, the same were incorrectly set aside as the violation of interim injunction order may result in the proceedings under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908, but it would

not result in setting aside the registered deeds namely sale deeds and exchange deeds.

7. 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.

8. 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.”

9. 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.”

10. 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.

11. The learned counsel representing the respondent has failed to draw the attention of the Court to any provision of statutory law which may provide for declaring the sale deeds illegal merely on account of infringement of order of interim injunction. Moreover, in this case, the Court ordered the parties to maintain status quo. It is a well settled legal principle that interim or interlocutory orders merge in the final judgment passed by the Court. The interlocutory orders are applicable only during the pendency of the suit or litigation. In any case, the cloud of uncertainty over the registered sale deeds comes to end, the moment the suit or the appeal is decided.

12. Keeping in view the aforesaid facts, the observations of the First Appellate Court to that extent are set aside.

13. Disposed of accordingly.

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

August 11th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*