

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

**RSA-867-1990 (O&M)**

Reserved on: 15.11.2022

Pronounced on: January 20, 2023

Shanti Devi and another

.....Appellants

**vs.**

Jeet Kaur and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present:- Mr.G.S.Jaswal , Advocate, for the appellants.  
Mr. Rakesh Gupta , Advocate, for respondent No.8.  
None for respondents No.1 to 7.

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**HARKESH MANUJA, J**

By way of present appeal challenge has been made to the judgment and decree dated 02.04.1990 passed by Learned First Appellate Court; whereby decree for possession by way of specific possession, based on an agreement to sell dated 29.11.1974 has been passed in favour of plaintiffs as well as defendants No.2 & 3 (parties shall be referred to plaintiff and defendants) while reversing the judgment and decree dated 01.08.1988 passed by the learned trial Court.

Briefly stating, facts of the case as pleaded in the original plaint are that defendant No.1- Hans Raj owned land measuring 82 Kanals 6 marlas situated in Village Kakrala Anayat, Tehsil Kurla, District Kurukshetra. Regarding the aforesaid land, an agreement to sell dated 29.11.1974 was executed between Hans Raj being vendor and Gurbachan Singh as well as Sardar Singh as vendees to the extent of 400/1646 & 1246/1646 share, respectively. As per plaint, the total sale consideration was Rs.43,000/-, out of which a sum of Rs.20,000/- was

paid as earnest money, target date as per agreement was 25.12.1974 which was later extended up to 02.01.1977. It was also pleaded that the plaintiff along with the balance sale consideration visited the office of concerned Sub-Registrar on 02.01.1977 & 03.01.1977, however, defendant No.1 did not turn up and finally refused to execute the sale deed on 25.12.1979, thereby compelling the plaintiff to file suit for possession by way of specific performance, based on the aforesaid agreement dated 29.11.1974.

The said suit was contested by the vendor Hans Raj by filing his written statement dated 07.06.1980, denying the factum of execution of agreement in question as well as the payment of earnest money. It would be relevant to point out here that Sardar Singh neither made any claim for specific performance nor he was even impleaded as a party defendant in the original plaint though the suit pertained to the entire 82 Kanals 6 Marlas of land.

During pendency of the suit, based on a consent decree dated 08.05.1983, suffered by vendor Hans Raj in favour of present appellants who happen to be widow and son of Sardar Singh; an application under Order 1 Rule 10 CPC came to be filed for impleading them as defendants. The said prayer was allowed by this Court vide order dated 06.04.1983 passed in Civil Revision No.1416 of 2018, allowing them to be impleaded as defendants No.2 and 3 in the suit. Based thereupon, they filed their independent written statement denying the factum of agreement to sell dated 29.11.1974 and also claiming themselves to be owners by way of decree dated 08.05.1983.

Learned trial Court vide its judgment and decree dated 01.08.1988, dismissed the suit filed at the instance of Gurbachan Singh-plaintiff by holding that the execution of the agreement in question was not proved on record. In addition, though it was recorded that the decree dated 08.05.1983 suffered by Hans Raj in favour of present appellants/defendants No.2 and 3 was collusive in nature, however, the same was not ordered to be set aside, holding that the plaintiff had no locus to challenge its validity.

Aggrieved against the judgment and decree dated 01.08.1988; whereby the suit for specific performance filed at the instance of Gurbachan Singh was dismissed, his legal heirs filed first appeal. Vide judgment and decree dated 02.04.1990 the aforesaid appeal was allowed, thereby granting a decree for possession by way of specific performance in favour of respondents 1 to 7 herein, to an extent of 400/1646 share out of the suit land besides granting a similar decree in respect of 1246/1646 share in favour of Sardar Singh or the present appellants. Besides it, the consent decree dated 08.05.1983 suffered by Hans Raj in favour of present appellants was declared to be null and void and was thus, ordered to be set aside.

By way of present appeal, the primary grievance of the present appellants is against the findings recorded by the learned first appellate Court regarding the validity and veracity of the consent decree dated 08.05.1983 besides grant of decree for possession by way of specific performance in favour of plaintiffs, to an extent of 400/1646 share out of the suit land.

It has been contended on behalf of the appellants that the consent decree dated 08.05.1983 could not have been declared to be illegal, null and void in this civil suit as the only remedy available in law to impugn the same was by way of filing an application for recalling it in the same suit in the wake of specific statutory Bar prescribed under sub-Section 3 of Section 96 CPC, 1908. In this regard, he places reliance on the judgment of the Supreme Court in the case of **Pushpa Devi Bhagat (D) Th. LR. Smt. Sadhna Rai Vs. Rajinder Singh and Others 2006(3) R.C.R.(Civil) 479** . Para-12 of the same reproduced as under:

- “12. The position that emerges from the amended provisions of Order 23, can be summed up thus :*
- (i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.*
  - (ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1 Order 43.*
  - (iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.*
  - (iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.”*

In addition, he also submits that once the decree dated 08.05.1983 already stood acted upon, no challenge to the same could be made. As regards the grant of specific performance in favour of plaintiffs, learned counsel for the appellants submits that neither the original

agreement in question; nor receipt of payment of earnest money was ever produced or proved by the plaintiff and the agreement was sought to be proved merely by way of collateral evidence in the shape of statement of deed writer besides its register having been produced as Ex.P-1 by the deed writer PW-1. Learned counsel for the appellant also submits that the findings recorded by learned first appellate Court were wrong to the extent that the agreement in question was proved by way secondary evidence as the requirements of Section 65 of the Indian Evidence Act, 1872 as regards its loss as well as existence were never established on record.

On the other hand learned counsel for respondent No.8 submits that the bar under Sub Section 3 of Section 96 CPC as regards challenge to the consent decree is applicable only to the parties to the said decree and would not apply to curtail the rights of a third party while challenging the same even in collateral proceedings. He also submits that the consent decree dated 08.04.1983 was even hit by the principle of *lis pendence* as the suit in this case was filed much prior thereto on 02.01.1980. He also submits that the decree dated 08.05.1983 being unregistered would not even create any right, title or interest in favour of defendants No.2 and 3. As regards the proof of agreement to sell, learned counsel submits that there was sufficient evidence produced on record by respondents No.1 to 7/plaintiffs in the form of deed writer PW-Ramesh Chander who duly proved on record his entry register pertaining to the agreement in question besides the receipts as exhibit P-2 and P-3. He also submits that thumb impressions of vendor Hans Raj on the register of

the deed writer as well as present suit were also compared and proved through an expert.

I have heard learned counsel for the parties and gone through the paper-book as well as records. I am unable to accept the submissions made on behalf of the appellants. The suit for possession by way of specific performance based on the agreement to sell dated 29.11.1974 was filed on 02.01.1980, impleading the owner of the land-cum-vendor, namely, Hans Raj as the defendant. During pendency of the present suit, the said Hans Raj transferred the property in dispute in favour of the present appellants by virtue of consent decree dated 08.05.1983 passed in Civil Suit No. 201 of 1983 dated 06.04.1983 and based thereupon, the appellants herein were ordered to be impleaded as defendants in the present suit. Thus, once the consent decree dated 08.05.1983 was passed in favour of the present appellants at the instance of Hans Raj i.e. the owner/ vendor of the land in question who was already a party defendant in the present suit, the rights, title or interest flowing from the consent decree dated 08.05.1983 was always to remain subject to outcome of the present suit and thus, I do not find any illegality or infirmity in the judgment passed by the first Appellate Court as regards holding of the decree dated 08.05.1983 to be bad on account of principles of *lis pendens*. Reference in this regard can be made to the judgments of the Hon'ble Supreme Court in **Thomson Press (India) Limited Vs. Nanak Builders & Investors P. Ltd. and ors.**, 2013 (2) RCR (Civil) 875 and **Madhukar Nivrutti Jagtap and ors. Vs. Smt. Pramila Bai Chandulal Parandekar and ors.**, 2019 (4) RCR (Civil) 114. Relevant paras 24 and

14.3 of the aforesaid respective cases are reproduced hereunder for reference:-

***PARA 24 OF THOMSON'S CASE (SUPRA)***

*“24. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this Section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation. Discussing the principles of lis pendens, the Privy Council in the case of **Gouri Dutt Maharaj v. Sukur Mohammed & Ors.**, 1948 AIR (PC) 147, observed as under:*

*“The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The applicability of the section cannot depend on matters of proof or the strength or weakness of the case on one side or the other in bona fide proceedings. To apply any such test is to misconceive the object of the enactment and in the view of the Board, the learned Subordinate Judge was in error in this respect in laying stress, as he did, on the fact that the agreement of 8.6.1932, had not been registered.”*

***PARA 14.3 OF MADHUKAR'S CASE (SUPRA)***

*“14.3. ....The effect of doctrine of lis pendens is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. In other words, its effect is only to make the decree passed in the suit binding on the transferee, i.e., the subsequent*

*purchaser. Nevertheless, the transfer remains valid subject, of course, to the result of the suit.....”*

The discussion made hereinabove also covers the issue of *locus standi* of the plaintiff herein so as to impugn the veracity of the consent decree dated 08.05.1983. Still further, the argument raised at the instance of appellants herein as regards the bar of sub-Section 3 of Section 96 CPC having relied upon the judgment of **Pushpa Devi’s** case (supra), in my view, the same does not apply to the facts and circumstances of the present case. In this case, the plaintiff herein was never a party to CS No.201 of 1983 dated 06.04.1983 titled as Hans Raj Vs. Ram Singh and another, decided on 08.05.1983 and as such, could not be called upon to question the consent decree dated 08.05.1983 only by way of moving an application in the same suit.

More than that, though an agreement to sell in favour of plaintiffs may not create any right, title or interest in the suit land, however, the same definitely confers a statutory right upon them to get the said agreement enforced in law by invoking the provisions of Specific Relief Act, 1963, for short ‘the Act’ of course, subject to Sections 16 & 20 thereof. Even as per Section 19 of the Act, right of specific performance based on an agreement can be enforced against any person claiming under the vendor, the same of course, is subject to sub-Section (b) to Section 19 of the Act.

In the present case, a perusal of written statement filed at the instance of present appellants shows that no such plea/ protection provided under clause (b) of Section 19 of the Act was ever pleaded at their instance.

As regards the grant of relief of possession by way of specific performance in favour of plaintiff, no doubt, in the present case, the original agreement to sell dated 29.11.1974 was never produced on record; nor any application seeking permission to lead secondary evidence in this regard was ever sought for at his instance, however, in view of the proposition of laid down by this Court in **Darshan Lal Vs. Gurmail Singh and others**, 2018 (3) CCC 355 and the Hon'ble Supreme Court in **Dhanpat Vs. Sheo Ram (Deceased) through Lrs. And ors.**, **2020 (2) RCR(Civil) 437**, it is more than clear that no separate application seeking permission to lead secondary evidence was required to be filed at the instance of any party who laid due foundation in this regard through its pleadings as well as while leading evidence and relevant paragraph 5 and 20 of the aforesaid judgments, respectively, are reproduced hereunder for reference:-

**Para 5 of Darshan Lal's case(supra)**

*"5. In the considered opinion of this Court, there is no provision for moving an application for seeking formal permission to lead the secondary evidence. Section 65 of the Evidence Act does not envisage filing of any application for leading secondary evidence. A wrong practice is being followed by the subordinate courts. Sections 63 and 65 of the Evidence Act deals with the secondary evidence....."*

**PARA 20 of Dhanpat's case (supra)**

*"20. There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of*

*leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed.”*

Further from the pleadings and the evidence available on record, the plaintiff has been able to prove the existence as well as execution of the agreement to sell dated 29.11.1974, besides its prima facie loss. Brief synopsis in this regard can be laid down in the following manner:-

- i) The vendor Hans Raj while appearing as DW1 admits having entered into an agreement to sell that Smt.Shanti Devi i.e. mother of Gurpreet Singh, plaintiff and even goes to the extent of saying that he even requested Smt.Shanti Devi for execution of the sale deed qua the suit land; but she did not come forward;*
- ii) Post impleadment of present appellants as defendants in the suit, DW2 Inder appeared on behalf of vendor Hans Raj being his general power of attorney admitting the execution of the agreement in favour of plaintiffs and there is nothing placed on record so as to show that this admission by the general power of attorney was ever objected or or denied by vendor Hans Raj;*
- iii) PW1-Ram Kishan, deed writer, produced his register so as to show the entries regarding the agreement as well as the receipt of earnest money, besides proving the thumb impression of Hans Raj against these entries;*
- iv) PW5-Hand Writing Expert submitted and proved his report as regards thumb impression of vendor Hans Raj tallying with his thumb*

*impression on the Register of Deed Writer against the entries of agreement in question and the receipt of payment of earnest money;*

- v) *Plaintiff appeared as PW1 to support his case regarding the proof of execution of agreement as well as the receipt; and*
- vi) *It has never been unknown or uncommon that in case of execution of one joint/ single agreement to sell in favour of two purchases, original agreement has been kept by one of the two joint vendees having agreed to purchase majority share.*

From the aforesaid facts and circumstances, it has been very-well established on record that the agreement to sell dated 29.11.1974 as well as the receipt which have been proved on record by way of secondary evidence were duly executed and entered into between the parties as regards the land in dispute and the original remained with Sardar Singh i.e. the predecessor-in-interest of the appellants and thus, could not be produced in Court during trial.

Still further, from the facts and circumstances of the present case wherein the total sale consideration was Rs.43000/-, an amount of Rs.20000/- stood paid as earnest money coupled with the fact that the plaintiff even appeared before Sub-Registrar on the target date for the purpose of execution of the sale deed along with the balance sale consideration so delineated in the affidavit Ex.P4 produced on record at his instance, very-well establishes his readiness and willingness to perform his part of the agreement in question.

In view of the discussion made hereinabove, I do not find any illegality or perversity in the judgment passed by the Appellate Court

which is purely based on proper appreciation of pleadings as well as the evidence available on record, as such, no question of law much less substantial question of law is involved in the present appeal warranting interference by this Court in exercise of power under Section 100 of CPC read with Section 41 of Punjab Courts Act, 1941.

Accordingly, the present appeal is dismissed.

Pending application(s), if any, shall also stand disposed of.

January 20, 2023  
anil

(HARKESH MANUJA)  
JUDGE

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