

In the High Court of Punjab and Haryana, at Chandigarh

Execution Second Appeal No. 21 of 2019 (O&M)

Reserved On: 10.08.2023
Pronounced On: 17.08.2023

Jaswant Singh

... Appellant(s)

Versus

Manohar Singh Sachdev (Since Deceased) through his Legal Representative
and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sunil Chadha, Senior Advocate
with Mr. Akshay Chadha and Ms. Kashish Aggarwal, Advocates
for the appellant(s).

Mr. Hitesh Ghai, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The struggle of the decree holder to get possession of the property pursuant to a decree passed on 12.12.2012 continues. The petitioner herein is a third party objector. He purchased the property in dispute during the pendency of the suit. Hence, the sale in his favour is governed by the rule of *lis pendens*.

2. The objection petition filed by the petitioner (Jaswant Singh) has been concurrently dismissed by the trial Court as well as the First Appellate Court. In this appeal, the appellant prays for setting aside the aforesaid two orders passed by both the Courts below while allowing his objections.

3. Some relevant facts, in brief, are required to be noticed in order to comprehend the issue involved in the present case. In the year 1961, late Sh.Hazoor Singh, after taking the shop on rent, started Khalsa Bartan Store. On 01.04.1967, he inducted Amarjit Singh, his distant relative as 30% partner without any investment. In the partnership, deed it was specifically provided that on the dissolution of the firm, goodwill and tenancy rights would exclusively vest with late Sh.Hazoor Singh. On 12.05.1972, Surinder Kaur wife of Manohar Singh Sachdev (respondent-decree holder) was inducted as a partner to the extent of 20% share. On 08.11.1988, a new partnership deed was executed between Manohar Singh Sachdev son of late Sh.Hazoor Singh and Amarjit Singh in which the former had 70% share, whereas Amarjit Singh with 30% share. It was again provided that on dissolution, the goodwill and tenancy rights of the firm would exclusively vest in Manohar Singh Sachdev. On 30.06.1991, Amarjit Singh died. Thereafter, Manohar Singh Sachdev as a sole proprietor, continued to run business. It is his case that Navjeet Singh son of Amarjit Singh was employed as a Salesman. On 25.03.1998, Manohar Singh Sachdev son of late Sh.Hazoor Singh filed a suit for grant of decree for grant of mandatory injunction against Navjeet Singh and Inderjeet Singh sons of Amarjit Singh directing them to deliver the possession of shop. It was alleged in the suit that the aforesaid defendants have, with ill intentions, filed a suit for rendition of accounts and permanent injunction. Thus Manohar Singh Sachdev filed a suit claiming that the defendants Navjeet Singh and Inderjeet Singh were in the permissive possession as licensees. The trial Court dismissed the suit on 19.11.2009. However, in first appeal, the suit was

decreed by the First Appellate Court while reversing the judgment and decree passed by the trial Court. Manohar Singh Sachdev filed an execution petition on 23.02.2013. In that execution petition, Jaswant Singh (petitioner herein) filed an objection petition on 04.03.2014 which was dismissed by the Executing Court on 14.01.2019. The first appeal against the order of the Executing Court has been dismissed vide order dated 12.03.2019. On 04.04.1998, Bishan Gopal and Krishan Gopal, owners, have sold the residential house as well as shop to Pardeep Kumar, Ajaib Singh and Jagbir Singh. In the aforesaid sale deed, it was recorded that the possession of the residential house has been handed over to the vendees. However, there was no delivery of possession with respect to the shop. The aforesaid vendees, namely Pardeep Kumar etc. have transferred the land measuring 28 square yards i.e. the shop to Jaswant Singh on 23.01.2012. That is how the objection petition was filed by the appellant.

4. The Executing Court, after framing the issues, that arose for adjudication, permitted the parties to lead evidence. By an elaborate judgment dated 14.01.2019, the execution petition was dismissed.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book and also the requisitioned record along with the synopsis filed by the learned counsel representing the parties.

6. The learned senior counsel representing the petitioner has filed a written note reiterating his oral arguments, which reads as under:-

“1. Admittedly, as per own case of R1, he stood dispossessed on 09.04.1996. Judgment & Decree dated 22.12.2012

remained no longer enforceable as R2 & R3 had delivered back possession to original owner (Bishan Gopal), who had further sold to Pardeep Kumar etc. on 04.04.2008 and Pardeep Kumar etc. had further sold it to appellant on 23.01.2012.

2. *Judgment & decree dated 22.12.2012 is a nullity as R1 ought to have filed a suit under Section 6 of the Specific Relief Act as despite the fact that he stood dispossessed on 09.04.1996, he filed suit only on 25.03.1998 i.e. after two years.*
3. *Judgment & decree dated 22.12.2012 cannot be executed against the appellant, who is lawful owner in possession and a bonafide purchaser for valuable consideration.*
4. *R1 concealed fact of old shop having been demolished and new construction being raised, from the court which passed judgment and decree dated 22.12.2012, and also from the notice of Executing Court.*
5. *Appellant was never a party and R1 did not deliberately implead his predecessors-in-interest (Bishan Gopal and Pardeep Kumar etc.) as party to his suit. 6. In the light of decision dated 25.03.2019 of this Hon'ble Court in RSA-5008-2015, at best, R1 was a joint tenant. He cannot seek possession from joint tenant or co-tenants."*

7. On the other hand, the learned counsel representing the respondent has filed a detailed written arguments which read as under:-

- “i) *That brief facts of matter respondent no.1/Decree Holder had filed a suit of Mandatory injunction against Navjeet Singh and Inderjit Singh (Judgment Debtors) both sons of Amarjit Singh for directing them to deliver the possession of shop forming part of property no. B II-341 (old) and B IV 1998/1 (new) Chaura Bazar, Ludhiana and account books, bill books, record (purchase bills, S.T XXII forms issued by purchasers, rent receipts) etc goods lying at the said shop on 09.04.1996 along with other fixtures and fittings at the shop and suit for recovery of Rs.7,20,000/- by way of damages for illegal use and occupation of shop and goods lying at shop i.e. from 09.04.1996 till date.*
- ii) *That respondent No.1/Decree stated that father of respondent no.1/Decree holder namely Hazur Singh has taken the shop in question on rent and started the business in the name and style of M/sa Khalsa Bartan Store since 1961. Amarjit Singh was distantly related to Hazur Singh and was employed by Hazur Singh in the business. Hazur Singh made him partner w.e.f. 01.04.1967 to the extent of 30% in favour of Amarjit Singh without making investment vide partnership deed dated 01.04.1967. In said partnership deed, it was agreed upon that in event of dissolution the good will and tenancy rights shall vest with Hazur Singh. Hazur*

Singh out of love and affection took Surinder Kaur wife of respondent no.1/decree holder the extent of 20% vide partnership deed dated 12.05.1972. Hazur Singh died on 31.10.1988. Respondent no.1/Decree Holder has taken over the share of Hazur Singh to the extent of 70% and remaining 30% remained with Amarjit Singh 08.11.1988. vide partnership deed dated As per clause/point 8 of said partnership deed it was clearly settled that in event of dissolution the goodwill of the firm and tenancy premises/rights shall vest with the respondent no.1/Decree Holder. Said Amarjit Singh expired on 30.06.1991 and said partnership came to end. Thereafter respondent no.1a was running the business as proprietor. Navjeet Singh was employed by the firm as salesman @Rs.400/- per month. Navjeet Singh took illegal possession of the business premises.

iii) That in said civil suit defendants took the plea that Amarjit Singh was partner in the firm Khalsa Bartan Shop and co-tenant of the shop. After the death of Amarjit Singh tenancy rights have been inherited by all his legal heirs. Defendants are co-tenants in the shop as they have inherited their tenancy rights from their father Amarjit Singh.

iv) That Ld. Trial Court vide Judgment and decree dated 19.11.2009 dismissed the suit of respondent no.1.

Thereafter the appeal was allowed vide judgment and decree dated 22.12.2012 to the extent of relief of mandatory injunction directing to deliver the possession of shop along with goods lying in the shop as on 09.04.1996 to respondent no.1 and claim in regard to recovery was dismissed. Ld. Appellate Court has observed that as per terms of partnership deed that in event of dissolution of firm, the goodwill of business and tenancy rights of business premises shall be vested in Hazur Singh and in last partnership deed of 1988 these rights were vested in Manohar Singh Sachdev being holder of rights of his father Hazur Singh. It was further observed that after the death of Amarjit Singh who was having 30% share in the business was automatically dissolved. Manohar Singh Sachdev retained the business having major share in this business. There was no other partnership between Manohar Singh Sachdev and legal heirs of Amarjit Singh. The legal rights of said legal heirs at the most to seek rendition of accounts and to recover the share in the stock or the capital of this partnership concern to the extent of 10% which was owner by their father Amarjit Singh before his death. It is pertinent to mentioned that said judgment and decree dated 22.12.2012 was never challenged by legal heirs of Amarjit Singh, as such same has attained finality.

v) *That respondent no.1 has filed execution application dated 23.02.2013 for executing the judgment and decree dated 22.12.2012. In executing proceedings present petitioner Jaswant Singh has filed the third- party objections dated 04.03.2014 stating that said Judgment and decree is a nullity without jurisdiction and is not sustainable either in law and equity. More so, the decree as such is not executable as when the suit was pending in the Court the JDs who claimed themselves to be tenant in property in dispute handed over the possession to erstwhile owners and the erstwhile owners Bishan Gopal, Krishan Gopal sold the said property in terms of sale deed dated 04.04.2008 to Pardeep Kumar, Ajaib Singh and Jagbir Singh and said vendees sold the property in parts to different persons and the objector purchased property measuring 28 sq. yards bearing municipal no. B-VI-1998/1, Chaura Bazar, Ludhiana in terms of a sale deed dated 23.01.2012 and thus objector is owner in possession of the property in question much prior to the decree obtained by decree holder and during pendency of case neither the original owner nor the successor-in-interest were impleaded as party to suit. In reply respondent no.1/decree holder has stated that alleged sale deed claimed by objector; the objector has no right to get the possession as the legal possession is of*

decree holder. Any illegal dealing between the judgment debtor and objector does not effects the right of decree holder. Objector is bound by decree. If the sale deed is legal or valid, he can over get title the property not the possession.

- vi) *That Ld. Executing Court vide order dated 14.01.2019 has dismissed the objections petitioner Jaswant Singh. Ld. Executing Court has observed "That after giving a deep consideration to the averments and material on file, this Court is of view that decree is very much executable against the objector. Ld. ADJ Court in its judgment and decree dated 22.12.2012 has clearly held that judgment debtors to be illegal possession of shop in question. If said judgment debtors were in illegal possession, how could they have passed a lawful possession to the original owners Bishan Gopal and Krishan Gopal? Further if possession of said owners was not lawful, how could have they passed a lawful possession to the subsequent buyers Pardeep Kumar, Ajaib Singh and then Jagbir Singh. It follows that the said subsequent buyers could not have passed a lawful possession to the objector Jaswant Singh. In other words the possession of the objector Jaswant Singh over 28 sq. yards of the shop in question is as unlawful possession of the judgment debtors." It was further observed in para no.15 "That*

objector contends that he is bonafide purchaser for consideration and therefore the decree should not be executed. This court after carefully perusing then file is of the view that objector appears to be an bonafide purchaser of the said shop measuring 28 sq yards. This is apparent from sale deeds Ex.01 and Ex.02. However, the question of ownership and question of possession are two different questions. The objector no doubt is the owner of the said shop but he is not in the lawful possession of the same. There is a decree in favour of decree holder which in fact declares only possession of Monohar Singh Sachdev as lawful over the shop in question. Objector has only succeeded to ownership rights or in other words to the rights of a landlord as he has purchased the property, but the possessory rights of a tenant still vest in the decree holder. Objector can get the decree holder evicted by taking recourse to appropriate legal remedies, but he cannot be said to be in lawful possession.

- vii) That an appeal before Appellate Authority was filed by petitioner Jaswant Singh and same was dismissed vide order dated 12.03.2019. Ld. ADJ has observed that execution application is executable as the suit in which the decree under execution is passed has been instituted on 25.03.1998. Sale deed dated 04.04.2008 was executed by the owners which was certainly during the prudency*

of the suit. Further objector alleging to have purchased a portion of 28 sq yards vide sale deed dated 23.01.2012 i.e. before passing of decree in favour of decree holder. These facts clearly show that sale deed in favour of objector has been executed during the pendency of the suit. Accordingly the doctrine of lis-pendens as provided under section 52 of Transfer of Property Act, the sale deed in favour of objector is hit by doctrine of lis pendens meaning thereby the objector shall step into the shoes of the defendants in the suit and shall be bound by the decree in question and the sale deed in favour of objector cannot stand in the way of delivery of possession of property in decree to decree holder.

- 8) *That in plea of appellant that Navjeet Singh and Inderjit Singh being co-tenant has hand over the owners of suit legal possession to the erstwhile property and thereafter the said owners had sold the property vide sale deed 04.04.2008 and which was further 28 sq. yds. of property purchased by objector vide sale deed 23.01.2012 as such they are in legal possession of shop in dispute is wrong and illegal. It is pertinent to mentioned here that vide Judgment and decree dated 22.12.2012 it has been held by Hon'ble Court that said Navjeet Singh and Inderjit Singh of shop in was not in legal possession question, as the tenancy rights of said shop premises was with decree*

holder as per the partnership deed of year 1988 and as such they were in legal duty to deliver the possession to decree holder. Objector in his objections in execution application cannot take said plea, as same has been decided vide judgment and decree dated 22.12.2012 and the executing court in executing proceedings cannot examine the it again as same is beyond its jurisdiction. Executing Court cannot go beyond the decree passed for the purpose of executing the same.

- ix) *That objector Jaswant Singh was very much aware of the litigation pending between the decree holder and judgment debtor. Jaswant Singh in working in the same locality of Chaura Bazar, Ludhiana since 1961-62 and is known to Amarjit Singh father of Judgment debtor. In cross examination dated 27.11.2017 said Jaswant Singh OW-1 has admitted that he knows Amarjit Singh being neighbour. He was middle man in the marriage of brother of Amarjit Singh. It was further admitted by witness that Navjeet Singh was in occupation of shop as employee of Manohar Singh in his cross examination dated 17.05.2018. It clearly shows that objector was very much aware of pendency of litigation between the parties and having said knowledge has purchased the shop in dispute.*

- x) *That both Ld. Lower Courts has rightly held that*

objector Jaswant Singh has purchased the said shop in question during the pendency of suit and objector and judgment decree is dated bound by said 22.12.2012. It has been held by Ld. Courts that it were in illegal has held that judgment debtors Courts has possession of shop in question. Ld. dismissed the objections while observing that said decree is executable, as sale deed in favour of objectors is hit by doctrine of lis-pendens under A section 52 of Transfer of Property Act 1882.”

8. This Court has considered the submissions while analyzing the arguments of the learned counsel representing the parties. The first argument of the learned counsel is based on the fact that Manohar Singh Sachdev (respondent No.1) has alleged, while filing the suit, for grant of mandatory injunction that he was dispossessed on 09.04.1996. In the aforesaid suit, a decree for mandatory injunction in order to deliver possession has been passed in favour of the respondent No.1. The aforesaid decree has become final. In such circumstances, the decree in favour of Manohar Singh Sachdev is enforceable. Moreover, there is no evidence to prove that the possession of the plot was handed over by Navjeet Singh and Inderjeet Singh sons of Amarjit Singh in favour of Bishan Gopal. As already noticed, in the sale deed executed in favour of Bishan Gopal and Krishan Gopal the possession of the shop was never delivered to Pardeep Kumar etc. Moreover, it has come on the record that Jaswant Singh, the petitioner, is an acquaintance of Navjeet Singh and Inderjeet Singh. He has admitted that the petitioner was the neighbour of Amarjit Singh and was allegedly the middleman in the

wedding alliance of brother of Amarjit Singh. Moreover, Jaswant Singh has admitted that Navjeet Singh was in the occupation of the shop as an employee of Manohar Singh Sachdev. Thus, Jaswant Singh has sufficient knowledge of litigation arisen between the parties. Moreover, Jaswant Singh purchased the property during the pendency of the suit. Hence, there is no substance in the first argument of learned counsel representing the appellant.

9. As regards the second argument, it would be noted that a suit for mandatory injunction filed by Manohar Singh Sachdev was decreed while issuing a specific direction to Navjeet Singh and Inderjeet Singh son of Amarjit Singh to deliver the possession of the shop to Manohar Singh Sachdev. The remedy under Section 6 of the Specific Relief Act, 1963 is a summary remedy, however, the person illegally dispossessed is not debarred from filing of a regular suit after a period of six months. The suit was filed after a period of two years.

10. With reference to third argument, it would be noted that the judgment and decree dated 22.12.2012 unless set aside is a decree binding between the parties. The petitioner, as already noticed, is neither a bonafide purchaser nor such plea is available to him because he has purchased the property during the pendency of the suit.

11. With regard to the fourth argument put forth by the learned counsel, it is also liable to be rejected because the tenancy in favour of Manohar Singh Sachdev existed. The suit filed by Manohar Singh Sachdev for delivery of possession has been decreed. There is no order of eviction against Manohar Singh Sachdev. Hence, the fourth argument also lacks substance.

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12. As regards the fifth argument, it is also insbstantial because in the suit filed by Manjit Singh, neither Bishan Gopal etc. nor Pardeep Kumar etc. or the appellant were made the necessary parties. The aforesaid suit was filed against Navjeet Singh and Amarjit Singh which was decreed.

13. In the end, the learned senior counsel representing the petitioner relies upon the judgment passed in *Kamal Taneja and Another v. Roshan Lal and Others (Regular Second Appeal No. 5008 of 2015 decided on 25.03.2019)*. In that case, the partnership firm was dissolved in the year 1998 and the shop was closed and no business was conducted. The landlord filed an eviction petition against the firm in which the various partners were impleaded. In those proceedings, the petition qua some of the respondents was dismissed, however, it continued against the firm and its partner. In that context, the Court held that the ex-partner does not have any individual right in the tenanted premises. Hence, the aforesaid judgment is not applicable to the facts of the petitioner's case.

14. Keeping in view the aforesaid facts and discussion, the result is inevitable. Consequently, the appeal is dismissed.

15. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 17, 2023
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No