

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**203****ESA No.2 of 2010 (O&M)****Reserved on : 18.04.2023****Date of Decision : 29.04.2023**

Joginder Kaur and Others

....Appellants

VERSUS

Jarnail Singh and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Puja Chopra, Advocate for the appellants.

Mr. Sandeep Khunger, Advocate and

Mr. Saksham Khunger, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J.

1. The present appeal has been preferred by the decree-holders challenging the order dated 27.02.2009 passed by the Appellate Court accepting the objections filed by the objectors/defendant-respondent Nos.1 and 2 herein.

2. The brief facts relevant to the present *lis* are that Rasal Singh and Resham Singh residents of village Kharehwala were murdered on 24.09.1982. Joginder Kaur widow of Rasal Singh along with her minor children and mother of Rasal Singh filed a suit for recovery of damages against Gurbax Singh (defendant-JD No.1), Harbans Singh (defendant-JD No.2) and Hardev Singh (defendant-JD No.3). Wassan Singh father of Rasal Singh, who was murdered, was also made a party. On 05.12.1989 the Sub Judge, Ist Class, Zira passed an order on an application under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 vide which the share of the defendant-JDs, Gurbax Singh and Hardev Singh, was attached conditionally on the ground that the defendant-JDs wanted to alienate the

property to defeat the claim of the plaintiff-appellants. On 05.01.1990 the JD-Gurbax Singh through his wife Gurmeet Kaur, GPA holder, sold the land owned by Gurbax Singh at village Waras Wala Jattan and village Peer Mohammad to Baldev Singh son of Mukhtiar Singh and Jarnail Singh, Jugraj Singh sons of Dayal Singh (defendant-respondent Nos.1 and 2 herein). On 12.01.1990 the JD-Hardev Singh along with his brother Gurdev Singh and mother Sukhwant Kaur sold the land at village Waras Wala Jattan and village Peer Mohammad through GPA, Sukhwant Kaur, to Sukhwinder Singh, Baldev Singh sons of Mukhtiar Singh and Jarnail Singh and Jugraj Singh sons of Dayal Singh (defendant-respondent Nos.1 and 2 herein). On 07.11.1990 the suit was decreed for recovery of Rs.1,68,000/- along with interest @ 12% per annum from the date of filing of the suit till realization. The amount of compensation received under the order of the Court in a criminal case was directed to be deducted from the said amount of compensation. All the three defendants were held jointly and severally liable to pay the decretal amount. Harbans Singh, one of the defendant-JDs, filed an appeal against the judgment and decree dated 07.11.1990 and the same was disposed off vide order dated 24.08.1993 on the statements of the parties that firstly the decretal amount would be got recovered from defendant-JDs No.1 and 3 i.e. Gurbax Singh and Hardev Singh, and if the same was not recovered from them then the same would be recovered from defendant-JD No.2-Harbans Singh. Defendant-JD No.2-Harbans Singh was ordered not to dispose off his property till the amount is recovered entirely. The plaintiff-appellants herein filed an execution application in which notices were sent to the defendant-JDs, however, they did not appear despite notice. An application was thereafter filed for attachment of land of Gurbax

Singh and Hardev Singh. The subsequent vendees i.e. Baldev Singh, Sukhwinder Singh, Jarnail Singh and Jugraj Singh thereafter filed their objections. Baldev Singh and Sukhwinder Singh filed the objections through their GPA Dayal Singh, father of Jarnail Singh and Jugraj Singh. The Executing Court framed issues and accordingly the evidence was led by the parties and vide order dated 30.08.2006 the objections filed by the objectors were dismissed and the application for attachment of land sold by defendant-JDs was accepted. An appeal was preferred only by Jarnail Singh and Jugraj Singh i.e. defendant-respondent Nos.1 and 2 herein. In the appeal it was mentioned that the objectors, Baldev Singh and Sukhwinder Singh, had sold their shares to Jarnail Singh and Jugraj Singh (defendant-respondent Nos.1 and 2 herein) and as a result thereof they have become the exclusive owners of the entire land purchased from Gurbax Singh and Hardev Singh. The appeal was accepted vide order dated 27.02.2009. Hence, the present appeal.

3. Learned counsel for the plaintiff-appellants would contend that the Appellate Court has erred in reversing the well considered judgment passed by the Executing Court. It is further the contention of learned counsel for the plaintiff-appellants that the property was sold by defendant-JDs fraudulently during the pendency of the suit. The suit having been filed on 20.07.1988, the sale deeds Ex.R1 and Ex.R2 were executed on 05.01.1990 and 12.01.1990 respectively, and this too despite the property having been attached conditionally vide order dated 05.12.1989 (Ex.AW3/C) by the Trial Court. It is further the contention of learned counsel for the plaintiff-appellants that the sale deeds are sham transactions and defendant-respondent Nos.1 and 2 herein are not the *bonafide* purchasers for consideration. Learned counsel for the plaintiff-appellants has referred to the

statement of RW-1 Sardari Lal, the scribe of the sale deeds, who in his cross-examination has admitted that no money was passed on in his presence. Learned counsel for the plaintiff-appellants would contend that the entire amount of consideration is stated to have been paid in cash before the Sub Registrar, however, except for the self-serving statements of RW2 Sukhwinder Singh, and RW3 Mukhtiar Singh, there is not an iota of evidence to show that the sale amount was ever paid. Learned counsel for the plaintiff-appellants would further contend that Wassan Singh father of Rasal Singh, who was murdered, was also impleaded as a party and RW3 Mukhtiar Singh admitted in his cross-examination that Wassan Singh was a mediator in the land deal between him and Gurmeet Kaur. It is hence the contention that defendant-respondent Nos.1 and 2 were in the knowledge of the fact that a civil suit was pending and hence they cannot be considered as *bonafide* purchasers for consideration. Learned counsel for the plaintiff-appellants has argued that the village of the decree-holders (plaintiff-appellants) is Waras Wala Jattan and the village of objector-respondent Nos.1 and 2 is Peer Mohammad and the village of JDs i.e. Sukhwinder Singh and Baldev Singh is Kot Sadar Khan, which are all adjoining to each other and there is hardly a distance of 1 kilometer between the villages.

4. *Per contra* learned counsel for defendant-respondent Nos.1 and 2 has contended that defendant-respondent Nos.1 and 2 are *bonafide* purchasers for consideration and that the order of attachment dated 05.12.1989 (Ex.AW3/C) was only a conditional order and was not extended subsequently. It is further the contention of learned counsel for defendant-respondent Nos.1 and 2 that the principle of *lis pendens* would not apply inasmuch as the judgment and decree was passed on 07.11.1990 and the suit

property was purchased by defendant-respondent Nos.1 and 2 on 05.01.1990 and 12.01.1990. It is further the contention of learned counsel for defendant-respondent Nos.1 and 2 that sufficient evidence has come on the record to show that there were no entries in the revenue record *qua* any attachment and hence the defendant-respondent Nos.1 and 2 are *bonafide* purchasers for consideration.

5. I have heard learned counsel for the parties and with their able assistance have also perused the record.

6. In the present case the suit was filed on 20.07.1988. On 05.12.1989 a conditional order for attachment was passed. Learned counsel for defendant-respondent Nos.1 and 2 has not been able to show any subsequent orders whereby the said order of attachment was modified. The argument of learned counsel for defendant-respondent Nos.1 and 2 that respondent Nos.1 and 2 are *bonafide* purchasers for valuable consideration deserves to be rejected on the ground that there is no evidence on the record except for the self-serving statements of RW-2 Sukhwinder Singh and RW-3 Mukhtiar Singh that the amount was paid before the Sub Registrar. RW-1 Sardari Lal, the scribe of the sale deeds, categorically denied that there was any transaction which took place in his presence. There is not an iota of evidence forthcoming to show that any consideration was ever passed on. Further, the villages of the JDs as well as defendant-respondent Nos.1 and 2 herein are all adjoining to each other and within a distance of 1 kilometer. It is hence unbelievable that defendant-respondent Nos.1 and 2 were not aware of the murder of Rasal Singh and subsequent filing of the suit. Interestingly, Wassan Singh father of Rasal Singh, who was murdered, was also impleaded as a party in the present case. Mukhtiar Singh while appearing as RW3 in his

cross-examination admitted that Wassan Singh was a mediator in the deal of land made between him and Gurmeet Kaur. It is unbelievable that Wassan Singh, who is none other than father-in-law of plaintiff-appellant No.1, did not disclose regarding the pendency of the case. There is no manner of doubt that the property was sold during the pendency of the suit. That being so, defendant-respondent Nos.1 and 2 cannot be held to be *bonafide* purchasers for valuable consideration.

7. In view of the above, the judgment dated 27.02.2009 passed by the Appellate Court is set aside and that of the Trial Court dated 30.08.2006 is restored. The objections filed by the defendant-respondent Nos.1 and 2 stand dismissed. The appeal stands allowed accordingly. Pending applications, if any, also stand disposed off.

29.04.2023
jk

(ALKA SARIN)
JUDGE

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