

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

RSA-2446-2022 (O&M)

Reserved on: 24.02.2023

Date of pronouncement: 28.02.2023

Vinod Kumar and another

...Appellants

Versus

Meena Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Akshay Kumar Jindal, Advocate and
Mr. Pankaj Gautam, Advocate for the appellants.

Mr. Amit Jain, Advocate for the caveator-plaintiff.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs Vinod Kumar and Satbir Dahiya had brought a suit for specific performance and consequential relief of permanent injunction against defendants M/s PSG Developers and Engineers Ltd., New Delhi as well as Sudhir Kumar son of Vindhyachal Rai on the basis of agreement to sell dated 30.05.2007 in respect of the suit land contending that defendant in the month of August 2006 approached plaintiffs demanding loan of Rs.65 lacs for the purpose of obtaining necessary license or carving out colony and to obtain CLU from the Government. Plaintiffs agreed to the proposal of defendant No.2 and paid Rs.62,53,200/- to defendant No.2 by cheques, however, defendants failed to take necessary CLU

from the Government and even expressed their inability to arrange the amount. Ultimately, it was decided between the parties that plaintiffs might purchase the suit land for a total sale consideration of Rs.65 lacs out of which the loan amount already paid i.e. Rs.62,53,200/- would be earnest money. An agreement to sell dated 30.05.2007 was executed and final date for registration of the sale deed was fixed as 14.11.2007. According to the plaintiffs, they have been ready and willing to get the sale deed executed in their favour but defendants backed out, as such, they brought the suit in question.

2. Notice of the suit was given to the defendants but they did not appear despite service, as such, they were proceeded against ex parte. After recording evidence, the suit of the plaintiffs was decreed, vide judgment and decree dated 10.09.2014. Thereafter, the plaintiffs filed an application for execution of the decree.

In such proceedings, objectors Smt. Meena Devi wife of Virender Singh and Smt. Bimla Devi wife of Surender Singh, both residents of Village Rampura, Tehsil Manesar, District Gurgaon appeared and filed objections under Order 21 Rules 99 & 101 read with Section 151 of CPC, contending that they had purchased the land from Smt. Kailash Devi wife of Rohtash Singh, R/o Village Shikohpur, Tehsil Manesar, District Gurgaon, vide registered sale deed No.2649 dated 13.03.2013 and earlier to that, the land was recorded in the name of M/s PSG Developers and Engineers Ltd., who had sold the land to

Smt. Vinod Kumari wife of Narender and Suman wife of Devender, vide sale deed bearing No.1322 dated 27.10.2010, who in turn had sold the land to Kailash Devi from whom the objectors had acquired the title and decree holders Vinod Kumar and Satbir Singh Dahiya in collusion with M/s PSG Developers and Engineers Ltd., through its Director and Managing Director Sh. Y.S. Rana and one Sudhir Kumar had created the entire sequence of chain by way of fabrication so as to do cheating and play fraud. M/s PSG Developers and Engineers Ltd., was created and various cases have been registered against that concern. The persons managing the affairs have collected about Rs.40 crores from hundred of investors. Even in the judgment of the trial Court in para No.3, it is recorded that defendant No.1 had appeared and admitted the fact of the execution of agreement to sell dated 30.05.2007 and further that the entire property has been attached by the Court. Thereafter, he did not come to the Court and decree holders had obtained decree of possession by way of specific performance by concealment of facts and playing fraud upon the trial Court and the objector.

The Government of India, Ministry of Corporate Affairs through its official liquidator appointed by the High Court of Delhi have also communicated to Tehsildar Manesar, District Gurgraon, vide letter No.1761 dated 01.03.2013 that the property is attached with the official liquidator and the land sold by the company vide sale deed

No.1322 dated 27.10.2010 to Smt. Vinod wife of Narender and Smt. Suman wife of Devender Singh who had sold this land to Smt. Kailash Devi, vendor of the present objectors and that the agreement on the basis of which decree holders have obtained the decree is a forged and fabricated document. The objectors claimed themselves to be legal and lawful owners in possession of the property on the basis of sale deed dated 13.03.2013.

3. Those objections were resisted by the decree holders and vide detailed order dated 10.10.2019, the objections were found to be without any merit and were dismissed.

4. Feeling aggrieved, the objectors had preferred an appeal before District Judge, Gurgaon. That appeal was also dismissed by Addl. District Judge, Gurgaon, vide order dated 17.08.2022.

5. Thereafter the objectors had filed a separate civil suit for declaration and permanent injunction. On getting notice, defendants Vinod Kumar and Satbir Singh Dahiya put in appearance and moved an application under Order 7 Rule 11 (d) CPC seeking rejection of the plaint for the reason that since the plaintiffs in the suit had already filed objections under Order 21 Rules 99 & 101 CPC read with Section 151 CPC, which had been rejected by the executing Court and appeal filed by them against that order had also been rejected, a separate suit filed by them later on was not maintainable and the plaint was required to be rejected.

6. That application was contested on behalf of the plaintiffs.

Vide order dated 10.10.2019, the application was accepted and plaint was ordered to be rejected. The operative part of the order is being reproduced for ready reference:-

“After giving thoughtful consideration to the arguments advanced by the learned counsel for the parties, it is evident from the perusal of the file that instant execution petition has been filed on pursuance of judgment and decree dated 10.09.2014 passed in civil suit titled as Vinod Kumar Vs. M/S PSG Developer and Engineers Ltd. The necessity to file the aforesaid civil suit had arisen to get enforced the agreement to sell dated 30.05.2007 entered into between the plaintiffs and the defendant in the aforesaid civil suit qua the suit land. It is pertinent to mention here that in the aforesaid civil suit notice was duly served upon the defendant-M/S PSG Developer and Engineers Ltd, however, during the proceedings of the case it was proceeded exparte. Perusal of the photocopy of sale deeds as placed on the file shows that even after the institution of the civil suit titled as Vinod Kumar Vs. M/S PSG Developer and Engineers Ltd. the defendant alienated the suit land to Smt. Vinod Kumari and Smt. Suman Devi vide sale deed bearing No. 1322 dated 27.10.2010. The aforesaid subsequent purchaser further alienated it to Smt. Kailash Devi vide sale deed bearing No. 2052 dated 25.10.2011. Thereafter the objectors in the present case Meena Devi and Bimla Devi purchased it from Smt. Kailash vide sale deed No. 2649 dated 13.03.2013. However, neither on the date of entering into agreement to sell dated 30.05.2007 nor at the time of filing the civil suit titled as Vinod Kumar Vs. M/S PSG Developer and Engineers Ltd. the objectors as well as their vendors were in existence. The relevant law regarding proposition under

*consideration is enshrined in order order 21 rule 102 CPC which says:- that the nothing in rule 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor had transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person. Therefore, from above discussion and perusing photocopies of sale deeds as placed on the file it is evident that the subsequent sale deeds No.1322 dated 27.10.2010, No.2052 dated 25.10.2011 and No. 2649 dated 13.03.2013 are hit by principle of lis pendens and the objectors Smt. Meena Devi and Smt. Bimla Devi have steeped into their vendors. Further the principle of lis pendens is based upon public policy and has been evolved to avoid multiplicity of the proceedings time and again and to bring litigation to amend. If such objections are considered there will be no end to the litigation and successive transfers will lead to filing of separate suit. Further a persons who purchase property pending litigation, step into shoes of their vendors and that being so, separate suit, to challenge the legality and validity of proceedings conducted vis-a-vis sale of the property, as such is not maintainable, in the light of the provisions of Order XXI as well as Section 47 CPC. In the light of the same, the only remedy available with the transferee i.e. plaintiff is to file objections in the execution application, if any, and no separate suit, as such, is maintainable, on behalf of subsequent vendor. Suit to challenge the legality and validity of attachment, sale and confirmation of sale, as such, is not maintainable. Reliance in this regard is placed upon case law titled as; **Ramesh Kumar Versus Chander Bhan and another 2017 (4) PLR 620 (P&H).***

Since the objections filed on behalf of the objectors are devoid of any merits therefore, the objection stands dismissed with no order costs.”

7. Feeling aggrieved by that order, the plaintiffs had preferred an appeal before District Judge, Gurugram which was assigned to Addl. District Judge, Gurugram, who vide order dated 17.08.2022 had accepted the appeal, set aside the order in question and restored the civil suit issuing direction to the trial Court to proceed with the matter further as per law.

8. Now it was turn of such defendants Vinod Kumar and Satbir Singh Dahiya to feel aggrieved and they have approached this Court by way of filing the present Regular Second Appeal. The plaintiffs in the civil suit namely Meena Devi etc., had filed a caveat and they have put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. Appellants Vinod Kumar and Satbir Singh Dahiya claimed to have entered into an agreement to purchase the property on 13.05.2007 and thereafter, filing a suit, getting ex parte decree in the year 2014. For execution of that decree, they had filed a petition where Smt. Meena Devi and Smt. Bimla Devi had appeared and claimed that they had purchased the suit property, vide sale deed dated 13.03.2013. Obviously sale deed in favour of Vinod Kumar and Satbir Singh Dahiya is prior in time then the sale deed put-forward by Meena Devi

and Bimla Devi. In any case Vinod Kumar and Satbir Singh Dahiya have got decree passed by the civil Court in their favour which is still there and has not been set aside. In the execution proceedings initiated by Vinod Kumar and Satbir Singh Dahiya for getting the decree in their favour implemented, Meena Devi and Bimla Devi appeared and filed objections under Section 47 and Order 21 Rules 99 & 101 CPC. In the said petition filed on their behalf Annexure A-3, it has been pleaded that all questions and objections with regard to the decree are to be decided by the said Court and there was no necessity to file separate suit for that purpose. Therefore, Meena Devi and Bimla Devi had surrendered to the jurisdiction of the executing Court. Their objections which were contested by the decree holders had been disposed of vide detailed order by the executing Court.

11. In appeal such objections have been declined. Once the objectors had availed of such remedy rightly also, now it is not open to them to file a separate suit which is clearly barred and the plaint was rightly rejected by the trial Court vide impugned order.

12. Learned Addl. District Judge, Gurugram clearly fell in error in setting aside that order and restoring the suit. The order passed by Addl. District Judge, Gurugram is result of wrong interpretation of law. No separate suit under the circumstances lies.

13. Although, learned counsel for the respondents/plaintiffs contended that the plaintiffs have approached the Court levelling allegations of fraud also, therefore, a separate suit is maintainable but I

am not impressed by this contention. Merely by saying that some transaction is result of fraud does not render it fraudulent unless specific allegations in that regard are there and particulars of alleged fraud are pleaded. The executing Court had jurisdiction to adjudicate all the objections put-forward by the objectors and it has done so. Now just to avoid the unfavourable order passed by the executing Court and affirmed by the Appellate Court, the objectors cannot say that separate suit filed by them is so maintainable.

14. Learned counsel for the caveator-plaintiff has contended that the present appeal is not maintainable since Ist Appellate Court has simply remanded the case back to the trial Court for proceeding further in the matter and at the most, Vinod Kumar and Satbir Singh Dahiya defendants in that suit could have filed first appeal against the order and not the present Regular Second Appeal.

15. Learned counsel for the appellants has, however, contended that in terms of Section 2 CPC, decree includes rejection of a plaint and for that reason, Meena Devi and Bimla Devi had themselves filed an appeal before District Court, and therefore, the present appellants who are defendants in the civil suit have rightly filed Regular Second Appeal, since it is not a case of remand only but decision on merits.

16. After hearing the rival contentions, I find that learned Addl. District Judge, Gurugram, vide impugned order has set aside the order passed by the trial Court rejecting the plaint, in the process,

restoring the suit and thereafter, issuing a direction to the trial Court to proceed further. This direction is certainly not in the nature of a remand of a case, therefore, the present appeal filed is found to be maintainable.

17. Learned counsel for the appellants has referred to judgments **Bangalore Development Authority Vs. N. Nanjappa & Anr.**, 2022(1) RCR (Civil) 337 and **Jaswant Singh & Anr. Vs. Kuldip Raj & Ors.**, 2011(2) PLR 368.

18. Learned counsel for the caveator has also pressed into service **J. Balaji Singh Vs. Diwakar Cole & Ors.**, (2017) 14 SCC 207 and **Sriram Housing Finance and Investment India Ltd. Vs. Omesh Mishra Memorial Charitable Trust**, 2022(3) RCR (Civil) 551.

19. I find that the factual and legal position in this case is very clear and no guidance from the judgments is required under the circumstances. I find that the appeal has got merit. Learned Addl. District Judge, Gurugram was clearly fell in error in setting aside order passed by the trial Court, rejecting the plaint. That order passed by Addl. District Judge, Gurugram is set aside and order passed by the trial Court rejecting the plaint is restored.

20. The appeal stands allowed accordingly.

28.02.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No