

208.2024:PHHC:009386

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-337-2023

Date of decision: 19.01.2024

Parkash Kaur (since deceased) through her LRs

... Petitioners

Versus

Lakha Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Gagandeep Singh Sirphikhi, Advocate, for the petitioners.

Mr. Viren Sibal, Advocate and
Mr. Satyam Sharda, Advocate, for respondent No.1.

GURBIR SINGH, J.

- 1.Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 07.12.2022 (Annexure P-9) passed by learned Civil Judge (Junior Division), Batala, in EXE-71 of 2014, vide which, the objections under Order 21 Rule 97 to 106 CPC filed by the petitioner have been dismissed.
- 2.Briefly stated, respondent No.1-decree holder, namely, Lakha Singh filed a suit against the judgment debtors/respondents No.2 to 6 for specific performance of the contract dated 31.07.1981 entered into by Bakshish Singh, respondent No.2 herein, or in the alternative suit for recovery. The learned trial Court held that the agreement was the result of collusion between Lakha Singh and Bakshish Singh and alternative relief was granted vide judgment and decree dated

03.03.1987. Lakha Singh filed appeal against the said judgment and decree, which was allowed vide judgment and decree dated 18.07.1989 passed by learned Additional District Judge in favour of Lakha Singh. Decree for specific performance was passed. Bakshish Singh was directed to execute sale deed as per agreement to sell. Defendants No.2 to 5-respondents No.3 to 6 herein were directed to join Bakshish Singh to execute the sale deed to the extent of Exs.D1 to D3 pertain to the land in dispute. Said respondents No.3 to 6 filed Regular Second Appeal bearing No.2020 of 1989 before this Court. Said appeal was partly allowed by this Court vide judgment dated 02.02.2009. The judgment and decree passed by the lower appellate Court was modified. This Court directed the suit for specific performance qua 16 Kanals and 6 marlas of land and dismissed the suit qua 27 kanals holding the respondents No.3 to 6 to be bona fide purchasers for consideration. Respondent No.1-decree holder filed execution with regard to 16 Kanals and 6 Marlas of land.

3. The Objector Parkash Kaur filed objections that respondent No.2-Bakshish Singh had entered into an agreement to sell with her regarding land measuring 8 kanals falling in Khasra No.38R/20(8-0). The sale deed was to be executed on or before 12.11.1983, but he failed to execute the sale deed as per agreement. So, she filed a suit bearing No.330 dated 04.11.1985 for specific performance of agreement, which was decreed on 01.02.1988 by the court of learned Sub Judge, Batala and on the basis of said decree, respondent No.2 executed and got the sale

deed dated 15.02.1988 registered in favour of Objector Parkash Kaur.

The Objector is in exclusive possession of said khasra number.

4. Learned counsel for the petitioner has argued that respondent No.1-Lakha Singh and respondent No.2-Bakshish Singh, colluded with each other, created a false agreement to sell in favour of decree holder with a mala fide intention to defeat the rights of the Objector. Respondent No.1 was having full knowledge about the rights of the Objector Parkash Kaur. Since respondents No.3 to 6 at the time of filing the written statement mentioned about the rights of the Objector, but she was not joined as a party. She filed a review petition against the judgment passed in RSA No.2020 of 1989, but same was dismissed on the ground that she was not a party to the suit and, therefore, has no locus standi to maintain the review petition.

4.1 It is further argued that in RSA No.2020 of 1989, it has been held that there had been collusion between Lakha Singh and Bakshish Singh. Respondents No.3 to 6 were held to be bona fide purchasers on that ground, so they were held owners to the extent of 27 Kanals which was purchased by them and decree regarding remaining land was passed. Lis pendens is only attracted when there is no collusion between the parties. It is further submitted that the learned Executing Court dismissed the objection on the ground that sale deed in favour of Objector is hit by lis pendens but said finding is against the provisions of Section 52 of Transfer of Property Act.

5. Learned counsel for respondent No.1 has submitted that petitioner was aware about the pendency of proceedings. She intentionally did not move any application to become party in the suit. Petitioner is the mother of respondent No.4-Satnam Singh, who was defendant No.3 in the suit. The Objector maintained silence for such a long period and now filed the objections which have been rightly dismissed.

6. I have heard the submissions of learned counsel for the parties and have gone through the file.

7. Section 52 of Transfer of Property Act reads as under:-

“52. Transfer of property pending suit relating thereto.—
*During the pendency in any Court having authority (within the limits of India excluding the State of Jammu and Kashmirs or established beyond such limits) by the Central Government of (any) suit or proceeding **which is not collusive** and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.”*

8. In case ***Baldev Raj Versus Dinesh Kumar and another, 2009(4) R.C.R. (Civil) 603***, it is held by this Court that in order to constitute lis pendens, suit proceedings must not be collusive.

9. In RSA No.2020 of 1989 titled as *Shiv Singh and others Versus Lakha Singh and another*, vide judgment dated 02.02.2009, it has been held that there was connivance of plaintiff-Lakha Singh with

defendant No.1-Bakshish Singh. The extract of said judgment reads as under:-

“In view of the findings recorded above and the evidence on record, it can safely be said that the appellants were bona fide purchaser for consideration and there was connivance of plaintiff with defendant No.1 in view of the admission by defendant No.1 that at the time of execution of sale deed the appellants were informed about the agreement to sell Ex.P-1. Thus the admission itself was sufficient to hold that the connivance of defendant No.1 with plaintiff as attempt was taken to disbelieve the stand of the appellant that they were bona fide purchaser for consideration.”

10. Since it is already decided that there was connivance of Lakha Singh and Bakshish Singh in executing the agreement to sell dated 31.07.1981, so rule of lis pendens is not attracted and the Executing Court has wrongly held that the sale deed of the Objector is subsequent to the filing of the suit and hit by the principle of lis pendens as provided under Section 52 of Transfer of Property Act.

11. In case ***Zobeda Khatun Versus Md. Habibullah Khan and others, Law Finder Doc ID # 1982703***, in similar situation Hon’ble Orissa High Court has held as under:-

“.....exercise of power involving the Application under Order 1, Rule 10 of C.P.C. and exercise of power under the provision of Order 21 Rules 97, 99 & 101 of C.P.C. are completely different. Further scope under Order 21 Rules 97, 99 & 101 of C.P.C. is even much wider. In the circumstance, this Court finds, there is no prohibition in bringing such Application even after rejection of such endeavor in exercise of power under Order 1, Rule 10 of CPC.”

12. The review application was dismissed on the ground that Parkash Kaur was not party to the suit as well in appeal. The Objector

has no other remedy but to file objections and same were required to be decided after taking the evidence whereby she should be given an opportunity whether she is a bona fide purchaser for consideration without notice.

13. In view of above, the impugned order 07.12.2022 (Annexure P-9) is hereby set aside and the case is remanded back to the learned Executing Court to frame issues and to decide the objections in accordance with law. The learned Executing Court shall give maximum three opportunities to the parties to produce the entire evidence and shall dispose of the objection petition within a period of six months.

14. Revision petition stands disposed of accordingly.

15. The parties are directed to appear before the learned Executing Court on 14.02.2024.

(GURBIR SINGH)
JUDGE

January 19, 2024
sanjeev

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