

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 239 of 1990 (O&M)

Date of Decision: 20.03.2024

Ludhiana Crucibble & Cupala Association

... Appellant(s)

Versus

Om Parkash and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Anish Setia and Mr. Surinder Singh, Advocates
for the Appellant(s).

Mr. Mandeep K. Sajjan, Advocate
for respondent No.1 to 3.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. This is the plaintiff's regular second appeal against the judgment and decree passed by the First Appellate Court, which, in turn, has reversed the judgment passed by the Trial Court.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Sh. Husan Lal, who died on 05.02.1975, was the owner of an industrial plot No. 365. He left

behind his widow, namely Smt. Shanti Devi, who inherited his property. Dass Mal, Om Parkash and Smt. Vidya Devi, who claimed themselves to be the brothers and sister of late Sh.Husan Lal, filed a suit for declaration asserting that Smt. Shanti Devi is now his widow, who was otherwise residing with him as a friend. The aforesaid suit was dismissed on 23.08.1976 on the basis of statement given by Om Parkash. Smt. Shanti Devi agreed to sell plot No.365 in favour of the plaintiff for ₹1,20,000/- vide agreement to sell dated 20.11.1978 upon receipt of ₹5,000/- as earnest money. On 05.02.1979. she received an additional amount of ₹35,000/- and delivered the possession of the property in part performance of the agreement to sell. In the month of February, 1979, Om Parkash filed a suit for the grant of permanent injunction restraining Smt. Shanti Devi from alienating the suit property. During pendency of the aforesaid suit, on 02.05.1979 Smt. Shanti Devi had executed a sale deed in favour of the appellant. The vendor and vendee went to get the sale deed registered in the office of the Sub Registrar on 02.06.1979, but its execution was refused with an endorsement that there is an interim order of stay got passed by Om Parkash restraining Smt. Shanti Devi from alienating the property. Om Parkash filed yet another suit on 18.08.1980 for grant of decree of declaration against Smt. Shanti Devi that he has become owner of the property. On the basis of family settlement, the said suit was decreed on 21.08.1980 as Smt. Shanti Devi filed an admitted written statement. Thereafter, Om Parkash filed another suit for grant of declaration and permanent injunction on 20.09.1980 along with an application under Order

XXXI Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter

referred to as “CPC”). In this suit, the appellant (the plaintiff) was also impleaded as a party. An interim application for grant of interim injunction was dismissed on 24.09.1980 against which the appeal was also dismissed on 22.01.1981. Om Parkash filed an application before the First Appellate Court for grant of time to file revision petition before the High Court which was allowed and the interim stay order was extended upto 30.01.1981 in the first instance. The interim stay order was further extended upto 07.02.1981 in the second instance. However, the sale deed was registered in favour of the plaintiff on 02.02.1981.

4. The plaintiff was entitled to get possession of some part of the property. Hence, he filed a suit for possession which was contested by defendant No.1, 3 and 4. Smt. Shanti Devi did not contest the aforesaid suit. The Trial Court dismissed the suit vide judgment and decree dated 16.12.1987. However, the same was set aside by the First Appellate Court on 20.09.1989. It has been disclosed by the learned counsel representing the parties that the First Appellate Court has reversed the judgment and decree passed by the Trial Court on the following two grounds:-

- i) The sale deed dated 02.05.1979 was registered on 02.02.1981 which is beyond the period of eight months, the maximum period prescribed for registration of the sale deed under Section 23 of the Indian Registration Act, 1908 (hereinafter referred to as “the 1908 Act”).
- ii) On the date of registration of the sale deed i.e. 02.02.1988, Smt. Shanti Devi was not the owner because she suffered a consent decree in favour of Om Parkash on

21.08.1980.

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

6. The learned counsel representing the parties have also filed their respective synopsis.

7. The learned counsel representing the appellant contends that Section 25 of 1908 Act do enable the Registrar to condone the delay even beyond the period of eight months. Hence, the period of eight months is sacrosanct. He further submits that there is no provision in the 1908 Act which provides that if the sale deed has been registered after a period of eight months, the same shall be unenforceable or void. Moreover, he submits that the plaintiff was not at fault as Om Parkash indulged in multiple litigation and has been involved in forum shopping by filing repeated suits.

8. Per contra, the learned counsel representing respondent No.1 to 3 submits that in view of the judgment passed by privy council in *Ma Pawa May and Another v. S.R.M.M.A. Chettiar Firm 1929 AIR (Privy Council) 279*, it is not permissible to condone the delay.

9. This Court has considered the submissions of the learned counsel representing the parties.

10. Sections 23 and 25 of the 1908 read as under:-

“23. Time for presenting documents.—Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless

presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

24. XXXX XXXX XXXX XXXX

25. *Provision where delay in presentation is unavoidable.—*

(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in 2 [India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.”

11. It is evident that the appellant (the plaintiff) was not at fault as he presented the sale deed for registration before the Sub Registrar on 02.06.1979 which was rejected on account of the interim stay order passed by the Trial Court. Therefore, it was not the fault of the appellant. From the facts narrated above, it is evident that Om Parkash has indulged in forum hunting by filing various suits.

12. The learned counsel representing the appellant is correct in relying upon the judgment passed by the Supreme Court in ***Raj Kumar Dey and Others v. Tarapada Dey and Others (1987)4 SCC 398***. The Supreme Court examined two maxims, namely “*Actus Curiae Neminem Gravabit*” and “*Lex Non Cogit Ad Impossibilia*” and held as under:-

“6. We have to bear in mind two maxims of equity which are well settled, namely, “*ACTUS CURIAE NEMINEM GRAVABIT*”-An act of the Court shall prejudice no man. In *Broom's Legal Maxims*. 10th edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution. The other maxim is “*LEX NON COGIT AD IMPOSSIBILIA*” (*Broom's Legal Maxims*-P. 162)-The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.

7. In this case indisputably during the period from 26th of July, 1978 to 20th December, 1982 there was subsisting

Regular Second Appeal No. 239 of 1990 (O&M)

injunction preventing the arbitrators from taking any steps. Furthermore, as noted before the award was in the custody of the court, that is to say, 28th of January, 1978 till the return of the award to the arbitrators on 24th of November, 1983, the arbitrators or the parties could not have presented the award for its registration during that time. The award as we have noted before was made on 28th of November, 1977 and before the expiry of the four months from 28th November, 1977, the award was filed in the court pursuant to the order of the court. It was argued that the order made by the court directing the arbitrators to keep the award in the custody of the court was wrong and without jurisdiction, but no arbitrator could be compelled to disobey the order of the court and if in compliance or obedience with court of doubtful jurisdiction, he could not take back the award from the custody of the court to take any further steps for its registration then it cannot be said that he has failed to get the award registered as the law required. The aforesaid two legal maxims-the law does not compel a man to do that which he cannot possibly perform and an act of the Court shall prejudice no man would, apply with full vigour in the facts of this case and if that is the position then the award as we have noted before was presented before the Sub-Registrar, Arambagh on 25th November, 1983 the very next one day of getting possession of the award from the court. The Sub-Registrar pursuant to the order of the High Court on 24th of

June, 1985 found that the award was presented within time as the period during which the judicial proceedings were pending that is to say, from 28th of January, 1978 to 24th of November, 1983 should be excluded in view of the principle laid down in Section 15 of the Limitation Act, 1963. The High Court, therefore, in our opinion, was wrong in holding that the only period which should be excluded was from 26th July, 1978 till 20th December, 1982. We are unable to accept this position. 26th July, 1978 was the date of the order of the learned Munsif directing maintenance of status quo and 20th of December, 1982 was the date when the interim injunction was vacated, but still the award was in the custody of the court and there is ample evidence as it would appear from the narration of events hereinbefore made that the arbitrators had tried to obtain the custody of the award which the court declined to give to them. The principles enunciated by this Court in Nityananda M. Joshi and Others v. Life Insurance Corporation of India and Others [1970] 1 S.C.R. 396 would have no application to the facts of this case.”

13. It is evident from the reading of Section 25 of the 1908 Act that a period of eight months is not absolute. In this case, it was impossible for the appellant (the plaintiff) to register the sale deed because of repeated orders passed by the Court granting injunction in favour of Om Parkash who was indulging in multiple litigations. In fact, he had taken the process of Court for a right by filing the repeated suits. It is also evident that Om

Parkash has, originally, filed a suit along with his brother and sister claiming that Smt. Shanti Devi is not late Sh.Husan Lal's widow. That suit was dismissed on 23.08.1976 on the statement of Om Parkash. Subsequently, Om Parkash has no right, title or interest in the property. Smt. Shanti Devi being the natural Class-I heir was only entitled to the property. However, once again Om Parkash filed repeated suits.

14. The Supreme Court has explained almost *pari materia* facts that the law does not compel a man to do but he cannot possibly perform. Moreover, the attention of the Court has not been drawn to any provision which provides that the sale deed registered after the lapse of eight months shall be void. It may be a restriction on the part of the Sub Registrar to register the sale deed. However, it does not adversely affect the duly registered sale deed.

15. Another reason assigned by the First Appellate Court is also incorrect as Section 47 of the 1908 Act has been overlooked, which is extracted as under:-

“47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”

16. It is evident that the registered document operates from the date it is executed unless it is stipulated that it will commence to operate from a particular date. It is evident that registration only makes the sale deed complete. However, once the process of registration is complete, it becomes effective from the date of execution. Reliance in this regard can be placed on

the judgment passed by the Division Bench of this Court in *Milkha Singh and Another v. Tara Singh and Others 1973 PLJ 124*. Therefore, the date Smt.Shanti Devi suffered consent decree, she was not the owner of the property. Hence, the consent decree will not affect the rights of the plaintiff.

17. This Court has examined the judgment relied upon in *Milkha Singh’s case (supra)*. In that case, the document was not presented for registration due to the fault of the party.

18. Keeping in view the aforesaid facts and discussion, the present appeal is allowed. The judgment passed by the First Appellate Court is set aside and that of the Trial Court is restored.

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

(Anil Kshetarpal)
Judge

March 20, 2024
“DK”

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