

RSA-2380-1992

2024:PHHC:031809
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129 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2380-1992
DATE OF DECISION:-05.03.2024

Mehnga Singh (now deceased) thr. His LRs ...Appellant..

vs.

Banta Singh and another ...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vinay Kumar Mahajan, Advocate and
Mr. Sushant Mahajan, Advocate,
for the appellant.

Mr. Rakesh Gupta, Advocate.
for the respondent(s).

HARKESH MANUJA, J. (Oral)

1. By way of present appeal, challenge has been laid to the judgment dated 03.11.1992 passed by the Court of learned Additional District Judge, Kurukshetra, whereby a decision dated 29.08.1989 passed by the Court of learned Additional Senior Sub-Judge, Kaithal, vide which, an application under Section 144 of the Code of Civil Procedure, seeking restoration of possession, filed at the instance of respondent No.1-applicant (Banta Singh), was dismissed.

2. Briefly stating, the suit land measuring 16 kanals comprising in Khewat No.224/430 to 445, rectangle No.31, killa No.13 & 18 being 146/7197 share of total measuring 795 kanals 19 marlas in village Usmanpur, Tehsil Bhewa, District Kurukshetra, was owned and possessed by Butta Mal. Respondent No.1-applicant purchased the suit land from

Butta Mal vide registered sale deed dated 12.03.1980, followed by delivery of its possession. Soon thereafter, the son of the vendor-Butta Mal namely, Roshan Lal-respondent No.2 while claiming himself to be co-sharer in the joint land, filed civil suit No.393/1981, seeking possession based on pre-emptory rights. The said suit was decreed in his favour vide judgment and decree dated 01.03.1983 by the trial Court.

3. Aggrieved thereof, respondent No.1-Banta Singh filed first appeal, however, the same was dismissed vide judgment and decree dated 05.11.1985 by the then Additional District Judge, Kurukshera. In the meanwhile, based on the judgment and decree dated 01.03.1983. Roshan Lal (respondent No.2) filed an execution application whereupon possession of the suit land was delivered to him by the executing court on 15.11.1985. Later, vide sale deed dated 26.12.1985 (Ex.D1), Roshan Lal sold the suit property in favour of the present appellant-Mehnga Singh along with delivery of possession thereof.

4. In a separate but related development, respondent No.1-applicant (Banta Singh) filed Regular Second Appeal bearing No.3320 of 1985, which came to be allowed in his favour by this Court vide decision judgment dated 29.04.1986, thereby dismissing the suit for possession by way of pre-emption, filed by Roshan Lal-respondent No.2. Based on the judgment dated 29.04.1986, respondent No.1-applicant (decree holder) filed application under Section 144 read with Section 151 CPC, seeking restitution of possession of the suit property in his favour, wherein, present appellant-Mehnga Singh (subsequent purchaser) filed his objections dated 10.08.1987, while claiming himself to be a bona fide purchaser. The said application came to be dismissed by the trial Court vide decision dated

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26.09.1987.

5. Aggrieved thereof, an appeal was filed, wherein the matter was remanded back to the trial Court vide order dated 04.04.1989. Post remand, the trial Court vide fresh decision dated 29.08.1989 dismissed the restitution application while recording appellant-Mehnga Singh to be a bonafide purchaser of the suit property; upholding his objections to the restitution application.

6. Still aggrieved, respondent No.1-applicant filed an appeal before the Court of Additional District Judge, Kurukshetra which came to be allowed vide decision dated 03.11.1992, thereby directions for restoration of possession of the suit land were passed in favour of respondent No.1-applicant while dismissing the objections filed at the instance of appellant-Mehnga Singh.

7. Impugning the aforementioned decision dated 03.11.1992, learned counsel for the appellant submits that the suit land was purchased by the appellant vide sale deed dated 26.12.1985 (Ex.D1), which never contained any stipulation as regards the pendency of any civil suit/proceedings qua the same and thus, having purchased the suit property against a valid sale consideration of Rs.40,000/- as reflected from the said sale deed, the appellant was a bonafide purchaser thereof thus, the restitution application filed at the instance of respondent No.1 was liable to be dismissed.

8. On the other hand, learned counsel appearing on behalf of respondent No.1 submits that the suit property was purchased by the appellant vide sale deed dated 26.12.1985 i.e. during the statutory period of 90 days of limitation, available with respondent No.1 for the purpose of filing Regular Second Appeal against the judgment and decree dated

05.11.1985 passed by the Court of Additional District Judge, Kurukshetra, dismissing the appeal filed at his instance and thus, at best having stepped into the shoes of his vendor-Roshan Lal, the appellant was bound by the final outcome of the pending litigation. Learned counsel thus submits that the sale deed dated 26.12.1985 (Ex.D-1) being hit by the doctrine of *lis pendens*, objections filed at the instance of appellant-Mehnga Singh were rightly dismissed by the Court below.

9. I have heard learned counsel for the parties and gone through the paper book.

10. A perusal of the record shows that upon dismissal of the first appeal filed at the instance of respondent No.1-Banta Singh, against the judgment and decree dated 01.03.1983 whereby suit for possession by way of pre-emption, filed at the instance of vendor of appellant, namely Roshan Lal, vide judgment dated 05.11.1985, in the normal circumstances, the period of 90 days for the purpose of filing of Regular Second Appeal was to expire in first week of February, 1986. Admittedly, during this period of limitation only, the appellant purchased the suit property vide registered sale deed dated 26.12.1985 (Ex.D-1) from Roshan Lal, followed by delivery of possession. Later, the Regular Second Appeal bearing No.3320 of 1985, filed at the instance of respondent No.1, within the prescribed period of limitation of 90 days, came to be allowed by this Court, vide decision dated 29.04.1986, resulting into dismissal of the suit for possession by way of pre-emption, filed at the instance of Roshan Lal-vendor of appellant and thus the sale deed dated 26.12.1985 (Ex.D1) executed by Roshan Lal was clearly hit by the doctrine of *lis pendens* in terms of Section 52 of the Transfer of Property Act, 1882. Reliance in this regard can be placed upon

decision passed by the Hon'ble Supreme Court in case of **"Jagan Singh vs. Dhanwanti & another"** 2012(2) SCC 628. Relevant para Nos. 19 to 22 of **Jagan Singh's** case (supra) are reproduced hereunder:-

*"19. The broad principle underlying Section 52 of the Transfer of Property Act is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. Even after the dismissal of a suit, a purchaser is subject to lis pendens, if an appeal is afterwards filed, as held in **Krishanaji Pandharinath Vs. Anusayabai AIR (1959) Bom 475**. In that matter the respondent (original plaintiff) had filed a suit for maintenance against her husband and claimed a charge on his house. The suit was dismissed on 15.7.1952 under Order IX, Rule 2, of Code of Civil Procedure 1908, for non-payment of process fee. The husband sold the house immediately on 17.7.1952. The respondent applied for restoration on 29.7.1952, and the suit was restored leading to a decree for maintenance and a charge was declared on the house. The plaintiff impleaded the appellant to the darkhast as purchaser. The appellant resisted the same by contending that the sale was affected when the suit was dismissed. Rejecting the contention the High Court held in para 4 as follows:-*

*".....In Section 52 of the Transfer of Property Act, as it stood before it was amended by Act XX of 1929, the expression "active prosecution of any suit or proceeding" was used. That expression has now been omitted, and the Explanation makes it abundantly clear that the 'lis' continues so long as a final decree or order has not been obtained and complete satisfaction there of has not been rendered. At page 228 in **Sir Dinshah Mulla's "Transfer of Property Act"**, 4th Edition, after referring to several authorities, the law is stated thus:*

"Even after the dismissal of a suit a purchaser is subject to 'lis pendens', if an appeal is

afterwards filed."

If after the dismissal of a suit and before an appeal is presented, the 'lis' continues so as to prevent the defendant from transferring the property to the prejudice of the plaintiff, I fail to see any reason for holding that between the date of dismissal of the suit under Order IX Rule 2, of the Civil Procedure Code and the date of its restoration, the 'lis' does not continue.

20. *It is relevant to note that even when Section 52 of Transfer of Property Act was not so amended, a division bench of Allahabad High Court had following to say in **Moti Chand Vs. British India Corporation AIR (1932) Allahabad 210:-***

*"The provision of law which has been relied upon by the appellants is contained in [Section 52](#), Transfer of Property Act. The active prosecution in this section must be deemed to continue so long as the suit is pending in appeal, since the proceedings in the appellate Court are merely continuation of those in the suit: see the case of **Gobind Chunder Roy v. Guru Chur Kurmokar 1888 15 Cal. 94.**"*

21. *If such a view is not taken, it would plainly be impossible that any action or suit could be brought to a successful termination if alienations pendente lite were permitted to prevail. The explanation to this section lays down that the pendency of a suit or a proceeding shall be deemed to continue until the suit or a proceeding is disposed of by final decree or order, and complete satisfaction or discharge of such decree or order has been obtained or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force. In the present case, it would be canvassed on behalf of the respondent and the applicant that the sale has taken place in favour of the applicant at a time when there was no stay operating against such sale, and in fact when the second appeal had not been filed. We would however, prefer to*

follow the dicta in **Krishanaji Pandharinath** (supra) to cover the present situation under the principle of lis-pendens since the sale was executed at a time when the second appeal had not been filed but which came to be filed afterwards within the period of limitation. The doctrine of lis-pendens is founded in public policy and equity, and if it has to be read meaningfully such a sale as in the present case until the period of limitation for second appeal is over will have to be held as covered under [Section 52](#) of the Transfer of Property Act.

22. **In the circumstances, we hold as follows:-**

(i) The judgment and order dated 13.2.2002 rendered by the Civil Judge, Junior Division, Najibabad in the suit No. 121/1994, the judgment and order dated 28.7.2004 passed by the Additional Distt. Judge, Bijnaur in Civil Appeal No. 97 of 2002, and the one dated 18.11.2004 by a learned Single Judge of Allahabad High Court in Second Appeal No. 982 of 2004 will have to be held as not laying down the correct law and will therefore have to be set aside. The appellant had sought a permanent injunction against the respondent No.1 from selling the concerned parcel of land either to the respondent No. 2 or otherwise. That sale had not taken place. The relief in Suit No. 121/1994 will therefore have to be moulded to grant only a declaration that the respondent No. 1 had no right to sell the disputed parcel of land.

(ii) The applicant Smt. Poonam Rajput has claimed that the said parcel of land has been sold to her by the first respondent subsequently on 27.9.2004. The second suit filed by the appellant bearing Suit No. 731 of 2004 in the Court of Civil Judge, Senior Division, Bijnaur sought to set-aside the sale in favour of the applicant. It has come to be dismissed for default though the legal representatives of the appellant contend that it was so dismissed since they were not aware about that suit. However, although we have dealt with the applicability of the principle of lis pendens to the present matter, the order concerning the second

sale passed in the second suit is not under challenge before us. It will be for the legal representatives of the appellant to apply to that court for appropriate orders, and it will be for that court to decide their application in accordance with law after hearing all the parties including the applicant.

(iii) Since, the learned senior counsel for the applicant has been heard in support of the I.A. No.3 and 4 of 2010 no separate order is necessary thereon. The same are disposed of accordingly.”

11. Once the appellant purchased the suit property during pendency of litigation between his vendor Roshan Lal and respondent No.1-Banta Singh, he having chosen to step into the shoes of vendor-Roshan Lal was undoubtedly bound by the final outcome of the same. Accordingly, Roshan Lal having lost the suit resulting into upholding of the same purchased by Banta Singh, the appellant had no right to claim himself to be a bonafide purchaser under the sale deed dated 26.12.1985 (Ex.D-1) especially in terms of the fact that appellant himself was a resident of the same village i.e. Usman Pur where the other litigating parties i.e. vendor-Roshan Lal and respondent No.1-Banta Singh resided and even the suit land was situated there only.

12. In view of the discussion made herein-above, finding no merit in the present appeal, the same is thus, dismissed.

05.03.2024

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No