



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA No.14 of 2025 (O&M)

Date of Order:20.02.2025

Teja Singh and others

.Appellants

Versus

Kamaljit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Ekta Thakur, Advocate,
Ms. Shikha, Advocate
Ms. Kanica Sachdeva, Advocate
for the appellants.

ANIL KSHETARPAL, JUDGE (Oral)

1. **BRIEF FACTS**

1.1 The appellants before this court are a decree holders in a suit for partition of the joint property. One of the co-sharers, namely Sh. Gurcharan Singh sold some part of the property in favour of his son-in-law Sh. Balbir Singh Bathal, who in turn sold the property to Smt. Kamaljit Kaur, the objector, vide registered sale deed dated 03.05.2012. The total area of the plot which has been sold is little more than 3 marlas that is nearly 100 sq. yds. Smt. Kamaljit Kaur has already constructed her house and is residing with the family.

1.2. It has been found by the First Appellate Court that the parties are colluding together in order to defraud the purchaser, namely, Smt. Kamaljit Kaur. The operative part of the order passed by the First Appellate Court



reads as under:-

“20. Another striking feature of this case is that plaintiff no.2/DH Nirvair Singh is residing in his house on the southern side of the house of the Objector and factum regarding purchase of plot in question by Objector was within his knowledge, since Objector erected her house and completed the same in the year 2013. During his cross-examination dated 04.09.2018, AW1 Nirvair Singh deposed that he filed suit for partition in the year 2004 and placed on file site plan Ex.O18 in the partition suit. He further stated that main street shown in the site plan is not shown in the record as it falls within the abadi. He further admitted that site plan Ex.O17 is correctly showing the situation of the suit property and then volunteered that Patwari cannot show abadi street on the north of the suit property as the same is lying within lal lakeer (red line). He also testified that at the spot, there is no passage from Point A to A1 in the site plan Ex.O17. He further deposed that he is residing in the house constructed by his father in the year 1960 and he further raised construction over the same in southern side in the year 1997. He further stated that he is using passage Mark A to A2 to approach his house. Interestingly, AW1 Nirvair Singh further testified that Objector has constructed three storey house towards northern side of the suit property and covered 3.25 marla. In his further cross-examination dated 13.09.2018, he deposed that he has not filed any appeal against judgment passed by Sh. Gopal Arora, the then CJJD, Kharar. He feigned ignorance regarding para no.11 of the said judgment, wherein his relief of injunction was declined and Issue no.2 was decided against the plaintiff. He further admitted that as per the order of the court, Raghbir



Singh, Halqua Kanungo had visited the spot and submitted his report dated 30.09.2013 regarding proposed partition. He also admitted that as per said report, there was no need to remove any construction of any party. He stated that he does not know if the said report was submitted by keeping the possession of the parties intact for proposed partition. He further stated that he had filed objections against the said report and also conceded that against his objections, no reply was filed by Gurbachan Singh and others. He further deposed that the court had ordered the Kanungo to revisit the spot and against the second report submitted by Raghbir Singh Kanungo, Gurbachan Singh etc. have not raised any objection. It is significant to note that Nirvair Singh admitted that Balbir Singh Bhathal is son-in-law of his uncle and Harbans Kaur is her aunt. He further deposed that in the year 2012, when Objector started constructing his house, he had not objected in writing but volunteered that he orally requested them to stop construction as the case was pending. He further stated that he has not made any complaint to the police against the Objector for raising construction. Quite astutely, this decree holder evaded comments regarding the fact that photographs Ex.O7 to Ex.O13 are the house of Objectors. However, he admitted photographs Ex.O14 and Ex.O15 to be of his house. It is apposite to note that he admitted that Balbir Singh Bhathal had engaged a counsel for final partition proceedings and conceded that counsel for Balbir Singh did not raise any objection during the proceedings of final partition. He further deposed that Kanungo did not call Balbir Singh Bhathal at the time of his visit. He failed to tell if at the time of second visit, as per the orders of the court, Kanungo had issued any notice to anyone or prepared memo of presence. He rather stated



that he was out of country at that time. Since, Kanungo had already taken the measurement as per the court order, so none on his behalf was present. He categorically stated that he has not brought to the notice of the court in writing that construction is being raised by the Objector. He admitted that he knew that Kamaljit Kaur was constructing house but inspite of his repeated objections, she continued construction. He further deposed that Harbans Kaur has sold the property being GPA to her son-in-law Balbir Singh Bhathal in the year 2009, who further sold half portion to Gurcharan Singh and to Kamaljit Kaur in May 2012. He admitted that he did not array Kamaljit Kaur as party, when the case was pending in the court. He further admitted that Gurcharan Singh was his father's brother and he has given power of attorney to Harbans Kaur and also identified his signatures on GPA Ex.O21. He also admitted that at present Objector is residing in the constructed house with her family.

21. Thus, from the aforesaid facts and circumstances, as well as the admission of DH Nirvair Singh, it emerges that he was very much cognizant regarding the sale of plot by his relative Balbir Singh Bhathal in favour of Objector Kamaljit Kaur. He was also having knowledge regarding construction raised by Kamaljit Kaur over her said plot. But he never brought it to the notice of the court of Sh. Bhupinder Mittal, Ld. CJJD, Kharar, where partition proceedings were pending. Since, the relief of permanent injunction was denied by the court of Sh. Gopal Arora, the then CJJD, Kharar as is evident from Para no.11 of judgment dated 26.02.2008, Kamaljit Kaur, Objector did not commit any willful disobedience of the orders of the court nor there was any kind of infraction of the aforesaid judgment and decree, since Sh.



Balbir Singh Bhathal sold plot of 3 ½ marla to Objector, which was under his possession.

22. Had the intentions of Balbir Singh Bhathal or Nirvair Singh, DH been bonafide, they would have certainly informed the court regarding the sale of 3 ½ plot to Objector Kamaljit Kaur. Rather, she has been kept in dark, since there was no mention of litigation in the revenue record, nor her vendor Balbir Singh Bhathal informed her regarding the aforesaid sale. Thus, all the attendant circumstances, indicates that there was a collusion between decree holder Nirvair Singh and Balbir Singh Bhathal, vendor of Objector Kamaljit Kaur, who conspired together to ensure that Objector is not taken on board in the said litigation and manages to get appropriate and favourable orders passed in the final partition proceedings.

23. Faced with this difficulty, Ld. Counsel for the DH Nirvair Singh has strenuously urged that any person purchasing property from defendant/JD during the pendency of the suit, steps into the shoes of the transferee and is bound by the decree. It was further contended that transferee pendent-lite is presume to have constructive notice of the lispendens, therefore, he has to sink and swing together with the transfers and as such, he is not necessary party. However, the court is unable to the subscribe to the aforesaid view. It is well entrenched law that an exception provided under Section 52 of the Transfer of Property Act is that 'Rule of lis-pendens' shall not apply where the suit and the execution proceedings are proved to be collusive. More so when, it is pleaded by a person resisting the possession that a decree sought to be executed, has been obtained by the decree holder in collusion and initiated by not impleading him/her as a party.



24. As such, on compounding the entire gamut of forgoing deliberations, the court concludes that both Nirvair Singh and Balbir Singh Bhathal were conspiring with each other in order to defeat the rights accrued in favour of Objector Kamaljit Kaur and therefore, neither of them apprised the court regarding sale of plot to her, on account of which she was deprived of an opportunity to step into the shoes of her predecessor in interest Balbir Singh Bhathal and raise appropriate objections, as per law. Needless to state that Balbir Singh Bhathal also did not contest the final partition proceedings properly and rather, suffered a statement that he has no concern or connection with the suit property, which itself is sufficient to infer his connivance with DH Nirvair Singh. Therefore, despite having clear cut knowledge in this regard, even Nirvair Singh DH also remained mum, which speaks volume about his collusion with his relative Balbir Singh Bhathal, who had sold 3 ½ plot out of his share to Objector Kamaljit Kaur. Thus, this court is of the considered view that the aforesaid final partition proceedings have been obtained by Nirvair Singh, Decree Holder by practicing fraud and collusion. Accordingly, the ensuing partition proceedings stands vitiated and are non-est qua the Objector Kamaljit Kaur. Sequel, the same has got no effect upon the right, title or interest of the Objector Kamaljit Kaur over her 3 ½ marla plot, upon which she has already constructed three storey house.

25. From the totality of the facts and circumstances delineated here-in-before, this court is of the considered view that the impugned order dated 22.01.2019 passed by the Ld. Lower Court vide which objections filed by the Objector Kamaljit Kaur were dismissed, is not legally sustainable in the eyes of law and is therefore, liable to



be reversed being perverse and dehors the settled position of law.”

2. **ARGUMENTS PUT FORTH BY THE LEARNED COUNSEL REPRESENTING THE PARTIES:-**

2.1. This Bench has heard the learned counsel representing the appellants at length and with her able assistance perused the paper book.

2.2. The learned counsel representing the appellants has made the following three submissions:-

- (1) The court has not decided issues no.1 and 2;
- (2) Smt. Kamaljit Kaur being purchaser governed by rule of lis-pendens had no right to object to the implementation of the decree.
- (3) Smt. Kamaljit Kaur knew that the property is joint.

3. **ANALYSIS AND DISCUSSION:**

3.1. It is evident that the Executing Court culled out the following four issues:-

- “1. Whether the objector is bona-fide purchasers and also in possession of the disputed land as prayed by him?OPO
2. Whether the objector is in possession of the disputed land as prayed?OPO
3. Whether the final decree obtained by the decree holder is result of fraud?OPO
4. Whether the present decree is not executable in the present form?OPO
5. Relief.”

3.2. Issues no.1 and 2 were decided by the Executing Court in



favour of the objector, namely, Smt. Kamaljit Kaur, however, her objection petition was dismissed because issues no.3 and 4 were decided against her. She filed an appeal. The findings on issues no.3 and 4 has been reversed. Hence, the First Appellate Court was not required to discuss findings of fact arrived by the Executing Court on issues no.1 and 2, particularly when the learned counsel representing the appellants did not assail its correctness during the course of arguments.

3.3. With respect to the second submission, there is a positive finding of the First Appellate Court upon appreciation of evidence that all the parties to the partition suit were colluding in order to defraud Smt. Kamaljit Kaur. It has come in evidence that Sh. Nirvair Singh, one of the decree holder, resides in the adjoining house. He permitted Smt. Kamaljit Kaur to raise construction of her house. After the completion of construction she has started residing therein along with family, now she is sought to be dispossessed. The doctrine of lis-pendens under Section 52 of the Transfer of Property Act, provides for two exceptions. The first exception is that if the parties to the suit are colluding. In this case, a positive finding has been arrived at by the First Appellate Court. The correctness of the same has not been challenged before this Court. Hence, the applicability of doctrine of lis-pendens would not advance the appellants' case.

3.4. The last submission of the learned counsel is also without substance because a co-sharer in possession is entitled to sell his or her share and deliver possession. In any case, the appellants, if so advised, may sue the other co-sharers, namely, the legal representatives of Sh. Gurcharan



Singh, to seek damages.

4. **DECISION**

4.1. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

4.2. Dismissed.

4.3. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

February 20, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No