



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

RSA No.962 of 1991 (O&M)

Reserved on: 05.02.2025

Pronounced on: 28.03.2025.

Satpal Singh and others

...Appellants

Vs

Jagpal Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Abhay Singh, Advocate
for the appellants.

Mr. G.S. Jaswal, Advocate
for the respondents.

VIKRAM AGGARWAL, J

Defendants No.1 to 4 (Sat Pal Singh, Jang Singh @ Jai Pal Singh, Mohan Pal Singh and Kanwar Pal Singh @ Raj Karan Singh) are in appeal against the judgment and decree dated 22.09.1990 passed by the Court of learned Additional District Judge, Ambala vide which the appeal filed against the judgment and decree dated 07.01.1987 passed by the Court of learned Sub-Judge, First Class Ambala City was allowed and the suit for possession filed by the respondents/plaintiffs was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The respondents-plaintiffs (Mahabir Singh, LRs of Tej Pal Singh and Jag Pal Singh) filed a suit for possession of land measuring 4 Bighas 12 Biswas (fully described in the plaint) (hereinafter referred to as the suit land) situated in Village Bihta Tehsil and District Ambala. The case set up by the plaintiffs was that one Smt. Chameli was the owner in

possession to the extent of $1/3^{\text{rd}}$ share out of total land measuring 98 Bighas situated in Village Bihta, Tehsil and District Karnal. Out of land measuring 13 Bighas 14 Biswas, Smt. Chameli sold the suit land to the plaintiffs vide registered sale deed dated 09.11.1973/12.11.1973 for a total sale consideration of Rs.6000/- and delivered the possession of the same to the plaintiffs. Defendant No.9 Sh. Aflatoon had accompanied Smt. Chameli at the time of registration of the sale deed and had appended his signatures on the same.

3.1. On the basis of the registered sale deed, mutation No.648 was entered. However, the same was not sanctioned in view of objections raised by defendants No.1 to 4. In fact the mutation was rejected on 28.05.1974. Appeal to the Collector and revision petition to the Commissioner were also dismissed on 07.10.1976 on 27.09.1977.

3.2. Defendants No.1 to 4 also applied for partition of the land in the joint Khewats including the suit land. However, the plaintiffs were not arrayed as parties but Smt. Chameli was arrayed as a party. In those proceedings, the suit land was allotted to Smt. Chameli in lieu of her $1/3^{\text{rd}}$ share in the land measuring 13 Bighas 14 Biswas. As the plaintiffs had not been impleaded as parties, they could not obtain the possession of the suit land as a result of which the suit had to be filed.

3.3. It was also averred that the defendants took undue advantage of the proceedings pending before the Tehsildar, Ambala and took possession of the suit land despite having the knowledge that the same had been sold to the plaintiffs.

3.4. It was further averred that any decree, as being claimed by the defendants to be in their favour against Smt. Chameli and mutation executed

in their favour on the basis of the same would have no effect on the rights of the plaintiffs as the suit land had already been sold to them by Smt. Chameli. It was averred that under the circumstances, the alleged collusive decree dated 21.10.1974 and mutation No.715 dated 07.03.1975 were illegal and unauthorized and ineffective against the rights of the plaintiffs. It was averred that the cause of action had arisen to the plaintiffs when the revision petition failed in 1977 and their possession was disturbed in the month of November/December 1977.

4. The suit was opposed by defendants No.1 to 4 only. In the written statement, the ownership of Smt. Chameli over the lands mentioned in the plaint including the suit land was admitted. The land having been sold to the plaintiffs was denied and it was averred that the sale deed had been fictitiously executed by the plaintiffs during the pendency of the suit filed by them against Smt. Chameli. It was also averred that the sale was without consideration. They had objected to the registration of the sale deed before the Registrar also but the Registrar did not agree. It was averred that the sale was hit by the principles of '*lis pendens*.' Other averments were denied. Certain additional pleas were taken that Smt. Chameli had no right to alienate the property but she started alienating the same as a result of which the defendants filed a suit on 09.11.1973 against her for perpetual injunction and when the sale deed was presented for registration, the suit had already been filed. It was averred that ultimately the suit was decreed on 05.15.1974 and, therefore, the sale was hit by the principles of '*lis pendens*.'

5. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed:-

- (1) Whether Smt. Chameli sold her 1/3rd share of the land measuring 4 bighas 12 biswas in favour of the plaintiffs by means of sale deed dated 9/12.11.1973 as alleged ?OPP
- (2) If issue No.1 is affirmed whether the plaintiffs were put in possession of the property as alleged ?OPP
- (3) Whether possession of the defendants over the property in suit is illegal and unauthorized as alleged? OPP
- (4) Whether decree dated 21.10.74/15.03.74 is collusive as alleged and if so, to what affect? OPP
- (5) Whether the sale deed was fictiously executed by the plaintiff during the pendency of the suit as alleged and if so, to what affect? OPD
- (6) Whether the sale of the property is hit by the principles of '*lis pendens*'?OPD
- (7) Whether the defendants are in possession of the property in their own right? OPD
- (8) Whether the plaintiffs have no cause of action for the present suit?OPD
- (9) Whether the plaintiffs are stopped by their conduct from filing the suit?OPD
- (10) Whether the suit is barred by principles of *res judicata*?OPD
- (11) Relief.

7. Parties led their respective evidence. The trial Court dismissed the suit for possession filed by the respondents-plaintiffs which led them to file an appeal which was allowed by the Court of learned Additional District Judge, Ambala, leading to the filing of the present second Appeal.

8. Learned counsel for the parties were heard.

9. Learned counsel submitted that the First Appellate Court had lost sight of the fact that the decree in favour of the defendants in the suit filed by them against Smt. Chameli was not a collusive decree because parties to a collusive litigation are desirous of creating third party rights in favour of some person by taking consideration from that person during the pendency of the suit. Thereafter, the matter is compromised in such a manner that the said person suffers and gets nothing. It was submitted that in the present case, the defendants had instituted the suit against Smt. Chameli and had tried their best to stop the registration of the sale deed in favour of the plaintiffs. However, since no interim injunction had been granted, the sale deed was registered. It was submitted that this fact alone shows that the decree was not collusive.

9.1. Learned counsel further submitted that the First Appellate Court failed to consider that Smt. Chameli had entered into a compromise with them (defendants) on account of which Rs.20,000/- had been paid to her whereas consideration in the sale deed was only Rs.6000/-. Learned counsel submitted that under the circumstances, it was clear that the same was not a collusive decree.

9.2. Learned counsel submitted that even otherwise the sale deed executed by Smt. Chameli in favour of the plaintiffs was hit by the principle of '*lis pendens*' as it had been executed during the pendency of the suit filed by them against Smt. Chameli. It was submitted that at best, the remedy with the plaintiffs was against Smt. Chameli and not against them.

9.3. It was further submitted that Order 23 Rule 3A CPC bars the filing of a suit to challenge a compromise decree and the only remedy to move an application in the same suit in which the compromise decree was

passed. It was submitted that the plaintiffs had not even challenged the said decree in their suit and had simply filed a suit for possession on the basis of the sale deed in their favour. In support of his contentions, learned counsel placed reliance upon the judgments of the Supreme Court of India in ***Triloki Nath Singh Vs. Anirudh Nath Singh* 2020(2) RCR(Civil) 661**, ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others* 2010 AIR (Supreme Court) 2807**, ***M/s Sree Surya Developers and Promoters Vs. N. Sailesh Prasad and others* 2022(2) Civil Court Cases 226(S.C.)**, ***Alagammal and others Vs. Ganesan and another* 2024(1) Civil Court Cases 654(S.C.)** and ***Gursuwamy Nadar Vs. P. Lakshmi Ammal (D) through LRs and others* 2008(3) RCR (Civil) 173** and judgment Karnataka High Court in ***Smt. Sushila and others Vs. Vijaykumar and others* 2020(6) KantLJ 113**, judgment of Jammu and Kashmir High Court in ***Gulam Nabi Khanday and others Vs. Mushtaq Ahmad and others* 2024 AIR Jammu and Kashmir 92**, judgment of Orissa High Court in ***Radjashyam Routray Vs. Puranjan Mohapatra and others* 1987 AIR(Orissa) 142**, judgment of Allahabad High Court in ***Amarnath and others Vs. Deputy Director of Consolidation, Kanpur and another* 1985 AIR(Allahabad) 163** and judgment of this Court in ***Smt. Sarvjeet Kaur Vs. Rang Lal*, 1999 (1) Civil Court Cases 0310.**

10. *Per contra*, it was submitted by learned counsel representing the plaintiffs that there is no illegality or infirmity in the findings recorded by the First Appellate Court. It was submitted that a registered sale deed could not be ignored just because a collusive decree had been passed on the basis of a compromise. It was further submitted that the suit had been filed on 08.11.1973, that is only a day before the execution of the sale deed which clearly shows the motive of filing the suit. Learned counsel submitted that in

any case on the day, when the sale deed was executed, there was no stay operating. Learned counsel submitted that since the plaintiffs were not a party to the said suit nor Smt. Chameli informed the Court that she had sold the suit land, the sale deed would not be barred by the principle of *lis pendens*.

10.1. Learned counsel submitted that the suit was clearly a collusive suit initiated with a view to defeat the rights of the plaintiffs. It was averred that Dhoom Singh and Sawan Singh who had also been arrayed as parties in the said suits were not affected by the decree since the suit was withdrawn *qua* them and the compromise was effected only with Smt. Chameli. It was averred that there was no relationship between Smt. Chameli and the plaintiffs whereas Smt. Chameli was related to defendants No.1 and 4 and, therefore, the collusive suit was filed.

10.2. It was further submitted that in any case, the said decree dated 15.03.1974 did not bind the plaintiffs as the plaintiffs were not parties to the same. Learned counsel submitted that there is no illegality in the judgment passed by the First Appellate Court and, therefore, the present appeal is devoid of merit. In support of his contentions, learned counsel reliance upon the judgments in ***Chand Kaur Vs. Raj Kaur 1997 AIR (Punjab and Haryana) 155, Shakuntla Devi Vs. Kamla and others 2005(2) RCR(Civil) 668, E. Ramu Vs. E. Krishnan 2010(55) RCR(civil) 38, Dillip Gupta and another Vs. Debashish Palit and others 2006(1) RCR(Civil) 649, Vaddeboyina Tulasamma and others Vs. Vaddeboyina Sesha Reddi (dead) by LRs 1977 AIR(Supreme Court) 1944 and Santhanam Kachapalaya Gurukkal Vs. V. Subramanya Gurukkal 1977 AIR (Supreme Court) 2024.***

11. I have considered the submissions made by learned counsel for the parties and find that there is no illegality or infirmity in the findings recorded by the First Appellate Court warranting interference.

12. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others***, (2016)6 SCC 157, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others***, (2019) 11 SCC 317 and ***Satender and others V/s Saroj and others***, 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no substantial question of law is required to be framed though in the present case, the main question that arises is as to whether the sale in favour of the plaintiffs was hit by the principle of *lis pendens* or not.

13. Reverting to the facts of the case, there are certain admitted facts. Admittedly, Smt. Chameli was the owner of the suit land as also other land. Admittedly, she executed a registered sale deed dated 09.11.1973 (Ex.P-1) in favour of the plaintiffs. Admittedly, a suit was filed by defendants No.1 to 4 against Smt. Chameli for perpetual injunction (Ex.P-6). A compromise Ex.P-5 was arrived at and judgment Ex.P-3 was passed on 15.03.1974. Also, *ex parte* stay order in the said suit restraining Smt. Chameli from alienating the suit land was passed on 15.11.1973. The suit also challenged the sale deeds and mortgage deeds executed by Smt. Chameli in favour of Narain Singh and Dhoom Singh who were impleaded as defendants No.2 and 3 in the said suit. However, Smt. Chameli entered

into a compromise with the plaintiffs therein in the absence of Narain Singh and Dhoom Singh as a result of which the sale and mortgage deeds executed in their favour remained unaffected. Further, she did not disclose before the Court concerned while entering into a compromise that she had already executed a sale deed dated 09.11.1973.

14. Under the circumstances, the primary issue which would arise for consideration would be as to whether the sale deed was hit by the principle of *lis pendens*. Section 52 of the Transfer of Property Act, 1882 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 Kashmir or established beyond such limits by the Central Government of any suit or proceedings 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 proceeding 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.

Explanation.—

For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a 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.”

15. In ***Parkash Kaur (since deceased) Vs. Lakha Singh and others (CR-337 of 2023 decided on 19.01.2024)***, a Coordinate Bench of this Court, while referring to a judgment of this Court in the case of ***Baldev Raj Vs. Dinesh Kumar and another 2009(4) RCR(Civil) 603***, stated that the principle of *lis pendens* would apply if the proceedings were not collusive. Still further, it is settled law that the principle of *lis pendens* does not annul the transfer but renders it subservient to the rights of the parties to a litigation. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in the case of ***Thomson Press (India) Ltd. Vs. Nanak Builders and Investors Pvt. Ltd. And others 2013, AIR SC 2089***.

16. Admittedly, the sale deed was executed on 09.11.1973 and the suit was filed on 08.11.1973. The stay order was passed on 15.11.1973. Smt. Chameli appeared in the suit after the execution of the sale deed in favour of the present plaintiffs. It appears that the suit was deliberately filed a day prior to the execution of the sale deed leading to the prima facie conclusion that it was collusive. The defendants did not want Smt. Chameli to execute the sale deed. Subsequently, it appears that Smt. Chameli got greedy and compromised the matter with the defendants. It is quite strange that on one hand the defendants say that they had appeared before the Registrar also to oppose the sale deeds but still, they chose to get a decree passed at the back of the plaintiffs and did not implead them as parties. In fact, the Court was not apprised of the fact that a sale deed had been executed in favour of the plaintiffs. Notably, Smt. Chameli did not file any written statement in the said suit and only placed on record a copy of the compromise as per which,

the decree was passed. The First Appellate Court rightly held that the suit had been filed to injure the rights of the plaintiffs and, therefore, the said suit was clearly collusive. It has also come on record that Smt. Chameli was related to defendants No.1 to 4 whereas the plaintiffs were complete strangers to her. It was rightly held that since the sale deed had been executed 09.11.1973, much prior to the service of summons upon Smt. Chameli and prior to her entering appearance in the suit, the same was not hit by the principle of *lis pendens*.

17. As regards the averment that the decree could not be set aside at the instance of the plaintiffs or that the decree had not been challenged, the same is devoid of merit. The plaintiffs based their claim upon the registered sale deed dated 09.07.1973 and only sought that the decree was not binding upon them especially once they were not parties. The plaintiffs were, therefore, not required to challenge the decree. There is, therefore, no illegality or infirmity in the findings recorded by the First Appellate Court.

18. I have gone through the judgments relied upon by learned counsel for the parties. In so far as the judgments relied upon by learned counsel for the appellants-defendants are concerned, the same are mainly on the point of challenge to a compromise decree and the provisions of Order 23 Rule 3A CPC. In the considered opinion of this Court, the said judgments would not be relevant for the purpose of the decision of the present appeal because the issue in the present appeal is the issue of *lis pendens*. The judgments on the issue of *lis pendens* would also not be applicable because the issue of *lis pendens* would have to be decided as per the facts of each case and there can never ever be a strait jacket formula for the same.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 28.03.2025
Rekha

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