

Punjab-Haryana High Court

Parveen Kumar And Others vs Smt.Baljinder Kaur And Others on 2 December, 2009

R.S.A.No. 1224 of 2005 (O&M)

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In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 1224 of 2005 (O&M)

Date of decision: 2.12.2009

Parveen Kumar and others

.....Appellants

Versus

Smt.Baljinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Arun Jain, Sr.Advocate with
Mr. Amit Jain, Advocate,
Mr.Vishal Goel, Advocate,
for the appellants.

Mr.R.S.Dhaliwal, Advocate,
for respondents No.1 and 2.

Mr.Roopak Bansal, Advocate,
for respondents No.5 to 8.

SABINA, J.

Plaintiffs- Baljinder Kaur and Balraj Singh had filed a suit for possession by way of specific performance of agreement to sell dated 12.10.1990, which was dismissed by the Additional Civil Judge (Sr.Divn.), Jagadhari vide judgment and decree dated 28.1.2002. In appeal, the said judgment and decree were set aside by the Additional District Judge, Jagadhari vide judgment and decree dated 17.1.2005 and the suit of the plaintiffs was decreed with costs. Hence, the present appeal by the defendants.

Brief facts of the case, as noticed by the lower appellate Court in para Nos. 2 and 3 of its judgment, are as under:-

"2. Defendant No.1 was owner of the suit land measuring 130K-5M situated within the revenue estate of village Safeelpur as detailed and described in the head note of the plaint. As per case of the plaintiffs, he(defendant No.1) agreed to sell the same to Baljinder Kaur plaintiff no.1 through her brother Balraj Singh, plaintiff no.2, at the rate of Rs.17,500/- per acre vide agreement to sell dated 12.1.90 Ex.P1. Further case of the plaintiffs is that Rs.50,000/- were paid as earnest money and remaining amount was to be paid at the time of execution and registration of the sale deed which was to take place on or before 28.2.91. It was stipulated in the agreement that in the event of failure of the defendant no.1 to execute and to get the sale deed registered within the stipulated period, plaintiff no.1 will have the option to get the same executed and registered through the process of the court. The agreement was signed by defendant no.1 and by plaintiff no.2 on behalf of plaintiff no.1 and was attested by two attesting witnesses. The earnest money was given to the defendant no.1 against receipt Ex.P2. On 28.2.91 plaintiff No.1 went to the office of Sub Registrar, Bilaspur to get the sale deed executed and registered with money to pay the balance sale price and to meet the expenses of execution and registration of the sale deed. She remained present in the premises of the office of Sub Registrar from 9.00 A.M. To 3.00 P.M but defendant no.1 did not turn up to get the sale deed executed. Plaintiff No.1 got her presence recorded before the Sub Registrar by executing an affidavit. She has always been ready and willing to perform her part of the agreement and is still ready and willing to get the sale deed executed and registered on payment of balance sale consideration. With these averments plaintiffs brought the present suit for possession of the suit land by way of specific performance of the agreement.

3. Defendant No.1 appeared and denied the claim of the plaintiffs in toto. He denied that he had entered into an agreement with plaintiff no.1 through her brother to sell the suit land. He even denied the receipt of Rs.50,000/- as earnest money. He pleaded that on 12.10.90 he had visited Jagadhri to execute a general power of attorney in favour of one Suresh Kumar regarding suit property. Said power of attorney was got scribed from a deed writer. When his signatures were obtained by the deed writer on said power of attorney, his signatures were obtained by the deed writer on some other papers also. He later came to know that the deed writer had also obtained his signatures on the agreement to sell Ex.P1 by playing fraud in collusion with the plaintiffs. Whereas no such agreement was executed by him nor he had received any amount as earnest money. He further pleaded that several trees of the value of more than Rs.2 lacs were standing on the suit land and therefore, there was no question of selling the land at the meagre price of Rs.17,500/- per acre. With these averments he sought dismissal of the suit."

On the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the defendant is the owner in possession of the land in dispute?OPP.

2. Whether the defendant had contracted to sell the land in dispute in favour of the plaintiff No.1 vide agreement dated 12.10.1990?OPP.
3. Whether the defendant received from plaintiff No.1 a sum of Rs.50,000/- as earnest money in pursuance of the agreement to sell dated 12.10.1990?OPP.
4. If issues no.1 and 2 are proved in affirmative, whether the plaintiffs are entitled to possession of the suit land by way of specific performance of the contractor of sale dated 12.10.1990? OPP.
5. Whether the agreement dated 12.10.1990 is a result of fraud and misrepresentation as alleged by defendant in para no.2 of written statement?OPD.
6. Whether the plaintiff has no locus standi to file the present suit?OPD.
7. Whether the suit of the plaintiffs is not maintainable in the present form?OPD.
8. Whether the agreement dated 12.10.1990 is not legally enforceable in the eyes of law?OPD.
9. Whether the defendant is entitled to special costs under Section 35-A CPC?OPD.

Vide orders dated 7.10.1986 and 19.7.2000, following additional issues were framed:-

- 9-A. Whether defendants no.2 and 3 are bonafide purchasers and if so, its effect?OPD-2 & 3. 9-B. Whether the defendants are bonafide purchasers with consideration in respect of suit land?OPD.
- 9-C. Whether the possession of the defendants is protected under Section 53(A) of Transfer of Property Act, as alleged?OPD.
- 10.Relief."

After hearing learned counsel for the parties, I am of the opinion that the present appeal deserves to be dismissed.

Baljinder Kaur and Balraj Singh had filed a suit for possession by way of specific performance of agreement to sell dated 12.10.1990. Learned trial Court decreed the suit of the plaintiffs for recovery of the earnest money. In appeal filed by the plaintiffs, their suit was decreed for specific performance of the agreement to sell. The appellants were not party before the Courts below. Defendants No.4 to 8 had purchased the property in dispute from defendant Nos. 2 and 3, who had in turn purchased the same from defendant No.1. The appellants have further purchased the property in dispute from defendants No. 4 to 8.

As per High Courts Rules and Orders Volume 5 Chapter I, Part C Rule 2, an aggrieved party, though not party before the Courts below, can file an appeal by seeking permission of this Court. In the present case, the application for leave to appeal has not been filed by the appellants. It is a procedural defect and the appeal is pending in this Court since the year 2005. In these circumstances, it would be in the interest of justice to dispose of the appeal on merits rather than dismissed the same on technical grounds.

So far as the execution of the agreement to sell in question is concerned, the same cannot be agitated by the appellants in this appeal as the defendants had not filed any appeal against the judgment and decree of the trial Court. It is only the plaintiffs, who had filed an appeal against judgment and decree of the trial Court seeking relief of specific performance of agreement to sell instead of recovery of the earnest money.

It has been held by the Apex Court in *Usha Sinha vs. Dina Ram* (2007) 7 Supreme Court cases 144 that the doctrine of *lis pendens* is based on the principle that the person purchasing property from the judgment-debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment-debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated. The doctrine of *lis pendens* would apply to the transaction in question and the High Court was wholly right in holding that the case was covered by Rule 102 of Order 21 CPC. The appellant could not seek protection of pendency of suit instituted by her. The executing Court was not justified in granting stay of execution proceedings.

It has been held by the Apex Court in *Amit Kumar Shaw and another vs. Farida Khatoon and another* (2005) 11 Supreme Court cases 403 that "Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that *pendente lite*, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a *lis pendens*, the following elements must be present:

1. There must be a suit or proceeding pending in a court of competent jurisdiction.
2. The suit or proceeding must not be collusive.
3. The litigation must be one in which right to immovable property is directly and specifically in question.
4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.

5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.

Admittedly, the appellants had purchased the suit property during the pendency of this litigation. Hence, the transfer of the suit land in favour of the appellants is hit by the doctrine of lis pendens. The question of good faith which is essential to be established before an equitable relief can be granted in favour of subsequent vendee is totally irrelevant so far as the transfer which is hit by the doctrine of lis pendens is concerned. In these circumstances, learned Additional District Judge had rightly decreed the suit of the plaintiff.

No substantial question of law arises in this regular second appeal. Accordingly, the same is dismissed.

(SABINA)
JUDGE

December 02 , 2009
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