

Punjab-Haryana High Court

Sarup Singh And Ors. vs Nirmal Singh And Anr. on 17 December, 1996

Equivalent citations: (1997) 116 PLR 91

Author: S Saksena

Bench: S Saksena

JUDGMENT Sarojnei Saksena, J.

1. The appellants have filed an application under order 39 Rule 1 with Section 151, Civil Procedure Code, praying that the respondent be restrained from alienating the suit land during the pendency of this appeal.

2. Brief facts of the case are that plaintiff-appellants filed civil suit No. 96/5.1.1991 for Specific Performance of contract averring that on 13.12.1990 the defendants entered into an agreement to sell the suit land to the plaintiff at the rate of Rs. 83,000/- per Killa. The plaintiffs paid Rs. 50,000/- as earnest money to the defendants. The remaining amount was to be paid at the time of execution of the sale deed, which was to be executed on or before 15.6.1991. The plaintiffs also alleged that after execution of the said agreement, the defendants started negotiating sale of the suit land with third persons. Plaintiffs also pleaded that they were/are always ready and willing to perform their part of contract. Hence,, they prayed for decree of Specific Performance of contract. In the alternative, they also prayed that a sum of Rs. 50,000/- be refunded to them and also claimed 50 per cent as penalty.

3. defendants contested the suit. The trial Court partially decreed the plaintiffs' suit for the refund of Rs. 50,000/- only with interest at the rate of 15% per annum from the date of agreement till the date of payment. Thus, the relief of Specific Performance of contract was denied.

4. Plaintiffs have filed this appeal challenging the said judgment and decree. During the pendency of the appeal they have filed the aforementioned petition to restrain the defendants from alienating the suit land to any third party.

5. Plaintiff-appellants' learned counsel contented that in case during the pendency of this appeal, the defendants alienate the suit land to some other person, they will be required to be impleaded in the suit and that will further complicate the issue. Relying on *Pranakrushna v. Vmakants Panda and Ors.*, 1989 Civil Court Cases 56, he contended that a party is protected by *lis pendens* is no ground why he should not also be further protected by an order of injunction restraining other party from alienating the property. Hence, the argued that in the interests of justice defendant-respondents be restrained from alienating the suit land till this appeal is decided.

6. Respondents' learned counsel relying on *Sham Singh v. Prem Chand and Ors.*, 1979 R.L.R. 506, *Piarey Lal v. Hori Lal* A.I.R. 1977 S.C. 1226, *Man Singh and Anr v. H.S. Kohli* (Harbhajan Singh Sodhi), (1997-1)115 P.L.R. 643, valiantly argued that the relief of Specific Performance of contract is not granted in favour of the plaintiff-appellants. This relief is a discretionary relief. The lower Court has only granted the relief of refund of the earnest money with interest. The execution of the agreement of sale does not confer any right, title or interest in the property in favour of the vendees;

therefore, the plaintiff-appellants have no right to restrain the defendant-respondents from alienating the suit land. In the end, he further contended that disposal of appeal may take many years. Till then if defendant-respondents are restrained from alienating the suit land, they will suffer irreparable loss and in case the plaintiff appeal is allowed, the doctrine of lis pendens will be applicable and subsequent purchaser, if any, will be bound by the decree.

7. It is settled law that mere agreement of sale does not confer any right, title or interest in the property in favour of the vendees. The trial Court has not granted decree of Specific Performance of contract, but only decree for refund of earnest money is granted. The defendant-respondents have already deposited Rs. 50,000/- in the Court to be paid to the plaintiff-appellants. If during the pendency of this appeal, the property in dispute is alienated by the defendant-respondents, the transaction will be hit by principle of lis pendens.

8. In view of this legal proposition, it cannot be said that the plaintiff will suffer irreparable loss. Conversely, the balance of convenience and the point of irreparable loss are in favour of the defendants, who will be deprived of their right to dispose of the suit property during a long lapse of time which this appeal is likely to take.

9. Consequently, the petition, being meritless, is hereby dismissed.