

SUPREME COURT OF INDIA

REPORTABLE

Bench: Justices Sudhanshu Dhulia and Prasanna B. Varale

Date of Decision: 3rd May 2024

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2991 OF 2024

(ARISING OUT OF SLP (CIVIL) NO. 4134 OF 2020)

CHANDER BHAN (D) THROUGH LR SHER SINGH ...APPELLANT

VERSUS

MUKHTIAR SINGH & ORS. ...RESPONDENTS

Legislation:

Transfer of Property Act, 1882, Section 41, 52

Indian Evidence Act, 1872, Section 126

Order 39 Rule 2A of the CPC

Subject: Appeal against High Court order in a civil matter involving specific performance of a property sale and the application of the doctrine of lis pendens and protection to bonafide purchasers under Section 41 of the Transfer of Property Act.

Headnotes:

Civil Law – Specific Performance – Appeal from High Court judgment reversing concurrent findings of lower courts dismissing specific performance suit, but granting refund of earnest money with interest – Supreme Court reinstates trial court and first appellate court’s decree for specific performance, setting aside High Court judgment – Held, transactions post-temporary injunction are subject to doctrine of lis pendens, making subsequent purchasers bound by results of pending litigation, regardless of their knowledge of such litigation – Temporary injunction effective from date of filing suit (21.07.2003) against transfer or alienation of property in question [Paras 19-25].

Bonafide Purchasers – Section 41 Transfer of Property Act – High Court found respondents 1-2 to be bonafide purchasers deserving protection under the Act – Supreme Court holds transactions executed in violation of lis pendens do not confer bona fide status, overriding the necessity of good faith and due diligence standard required under Section 41 [Paras 20-22].

Doctrine of Lis Pendens – Applicability confirmed under Section 52 of the Transfer of Property Act – Ensures that no party to litigation can alienate contested property so as to affect potential judicial outcome – Protects integrity of judicial process and prevents multiplicity of legal proceedings – Transactions during pendency of litigation impacting rights in immovable property are generally voidable and subject to final decree [Para 16, 18].

Evidence and Procedure – Adverse inference drawn against respondents 3 and 4 for failing to testify – Findings of trial court about respondents 1-2's knowledge of injunction disregarded by High Court without substantial reasoning – Supreme Court disregards High Court's reliance solely on witness PW-7's deposition, emphasizing broader legal principles over specific testimonies [Para 22-24].

Decision: The Supreme Court allowed the appeal, setting aside the judgment of the Punjab and Haryana High Court, and upheld the decree of specific performance issued by the trial court – Respondent no. 3 is directed to complete the sale agreement in favor of the appellant [Para 25].

Referred Cases:

- Shivshankara and Another v. H.P. Vedavyasa Char, 2023 SCC OnLine SC 358
- Rajendra Singh v. Santa Singh, AIR 1973 SC 2537
- Dev Raj Dogra v. Gyan Chand Jain, (1981) 2 SCC 675
- Sunita Jugalkishore Gilda v. Ramanlal Udhoji Tanna, (2013) 10 SCC 258
- Sardar Kar Bachan Singh v. Major S Kar Bhajan Singh, AIR 1975 P&H 205

J U D G M E N T

SUDHANSHU DHULIA, J.

1. The appeal filed by the appellant presently before us challenges the Judgement and order dated 03.10.2019, passed in a second appeal by the Punjab and Haryana High Court. The impugned Judgement of the High Court has reversed the concurrent findings of the trial court and the first appellate court and has consequently dismissed the suit of specific performance filed by the appellant-plaintiff, although a partial relief was granted to the appellant by return of the earnest money to the appellant, with interest.
2. The facts leading to this appeal are that on 10.11.2002 appellant and respondent no. 3 entered an agreement to sell relating to 16 “Kanals” of land for a total consideration of Rs. 8 lakhs, where Rs. 2.50 lakhs was paid at the time of agreement and remaining Rs. 5.50 lakhs was to be paid at the time of execution of sale deed, which was to be executed on or before 10.11.2004.
3. After the agreement to sell but before the date of the execution of the sale deed the present appellant having received the knowledge that respondent no. 3 was likely to alienate the suit property, files a suit for permanent injunction on 21.07.2003 against respondent no. 3 where an order of temporary injunction was passed in his favour on 28.07.2003. On the very same day, i.e., 28.07.2003 respondent no. 3 though executes a “release deed” in favour of his son, Harvinder Singh (respondent no. 4), for which mutation was also sanctioned.
4. Subsequent to the Release Deed, respondent no. 4, son of respondent no.3, executed a registered sale deed dated 16.06.2004 in favour of Mukhitar Singh and Baljeet Singh (respondent nos. 1-2) for the suit land.
5. The appellant then files a suit for specific performance before the Additional Civil Judge, Senior Division, Jind, as the defendant i.e. present respondent No.3 did not come forward even on the last day i.e. 10.11.2004 to execute the sale deed. In his Written Statement, respondent no. 3, takes the defence that the agreement for sale was signed by him, but under a “misconception”. It is contended that the appellant/plaintiff had taken the defendant to a shop for being a witness and had fraudulently obtained his signatures on the agreement to sell. Respondents 1 and 2, on the other hand, claimed to be *bonafide* purchasers for valuable consideration and sought protection under Section 41 of the Transfer of Property Act, 1882 (hereafter “Act of 1882”).

6. The Trial Court, nevertheless decreed the suit of the appellant with costs and directed respondent no. 3 to accept balance sale consideration and execute the agreement to sell. It was held that respondent no. 3 had admitted about the execution of the agreement to sell in the earlier suit for injunction filed by the appellant, and further Vijay Singh (PW-5) had verified the execution of the agreement. The Trial Court did not give any credence to the objections of the defendants (present respondents No. 3 and 4). Both these defendants, father and son respectively, had refused to depose in the witness box. An adverse inference was drawn against them by the Court, on this aspect as well.
7. An interesting development, meanwhile took place before the Trial Court. PW-7 who was the lawyer of the appellant in the injunction suit, had become an attesting witness of the “sale deed” executed by respondent no. 4 in favour of respondent nos. 1-2. The Trial Court, thus observed that from the deposition of PW-7 during cross-examination, PW-7 had committed a breach of privileged communication and violated Section 126 of the Evidence Act, 1872.
8. No appeal against this Judgement was filed by respondents 3 and 4. All the same, an Appeal was filed by respondents 1 and 2 before the Additional District Judge, Jind which was dismissed on 06.03.2012. While reiterating the findings of the Trial Court, the First Appellate Court had observed that since PW-7 was the attesting witness of the sale deed in favour of respondent 1-2 and also the advocate of the appellant in the injunction suit, therefore, it can be safely presumed that respondents 1-2 would have been aware of the injunction, and consequently their defence of *bonafide* purchaser can never be accepted. While dismissing the appeal, the Appellate Court observed that the respondents had colluded together to defeat the just claim of the plaintiff, i.e., the appellant before this Court.
9. Respondents 1-2 then filed their Second Appeal before the Punjab and Haryana High Court at Chandigarh, which was allowed vide order dated 03.10.2019, which is presently under challenge before us. The High Court in the impugned order has reversed the judgements of the trial court and the First Appellate Court, though it held that the plaintiff, i.e., the present appellant was entitled to the relief of refund of earnest money along with 8% interest per annum from date of agreement till date of judgement and 6% interest per annum from date of the date of judgement till realization of the amount.

10. Primarily three factors weighed with the High Court. Firstly, the Release Deed and order of temporary injunction were executed and passed on the same day i.e. 28.07.2003 and it was, therefore, not possible to determine that the Release Deed was in violation of the injunction order. Secondly, the suit for permanent injunction was ultimately dismissed as withdrawn so the protection afforded by the order of temporary injunction would subsume with the dismissal of the main suit. Thirdly, in the deposition and cross-examination of PW-7, there was no admission that he had informed respondents 1-2 about the order of temporary injunction in favour of the appellant. Although respondents 3 and 4 refused to depose in the witness box, yet respondents 1-2 had both appeared as a witness and from their deposition, it cannot be inferred that they were aware of the injunction order. Thus, the High Court concluded that respondents 1-2 were *bonafide* purchasers for valuable consideration and deserved protection under Section 41 of the Act of 1882. The relevant observations of the High Court are reproduced below:
- “In the suit for permanent injunction, land measuring 16 kanals out of khewat No. 322 khata No. 435 total measuring 86 kanal 14 marlas was the subject matter. Neither Harvinder Singh nor the present appellants were party to the said litigation. The interim injunction against alienation was allowed vide order dated 28.7.2003, the date a lawyer appeared on behalf of Iqbal Singh @ Pala Singh and filed memo of appearance. The release deed in favour of defendant No. 2 Harvinder Singh was executed by Iqbal Singh @ Pala Singh defendant No. 1 on 28.7.2003. There is no evidence on record as to the time when injunction order was passed by the trial court and the time when the release deed was executed and registered in favour of Harvinder Singh. This apart, sale in violation of an injunction order passed by the courts would not render the transaction void ab initio and, at best, proceedings under Order 39 Rule 2A of the Code can be initiated by the aggrieved party. There is nothing on record suggestive of the fact that respondent/plaintiff initiated any such proceedings against Iqbal Singh or Harvinder Singh. Moreover, the injunction order dated 28.7.2003 also lost its life the moment suit for permanent injunction was later dismissed in the year 2004. Counsel for the respondent-plaintiff has failed to cite any provision in law or a precedent that if suit property is transferred in favour of the vendor of a litigant claiming bona fide purchaser during*

pendency of earlier litigation, he is not entitled to protection under Section 41 of the TP Act irrespective of whether he was aware of pendency of that litigation or otherwise. The release deed in favour of defendant No. 2 and sale deed in favour of the appellants were subject to outcome of suit for injunction that was eventually dismissed by the Court. In this view of the matter, findings of the courts to reject plea of bona fide purchaser of the appellants on account of pendency of suit for permanent injunction are not based upon any legal ground, thus, unjustified.”

11. While allowing the second appeal, the High Court though has upheld the concurrent findings as to the execution of the agreement to sell, and that the appellant had paid Rs. 2.50 lakhs as earnest money to respondent no. 3. Consequently, the High Court gave the alternate relief to the appellant, as indicated above.
12. On behalf of the appellant, we have heard learned counsel Mr. Rameshwar Singh Malik, Sr. Advocate and Mr. Narender Hooda, Sr. Advocate on behalf of respondents 1-2. Though service by way of publication was done for respondents 3 and 4, they have not entered appearance.
13. Mr. Narender Hooda, Sr. Adv for the respondents/ defendants has relied on the findings of the High Court to submit that respondents 1-2 made due enquiries about the suit property, however, the revenue records did not indicate that another agreement to sell was executed in favour of the appellant. Further, it is argued that PW-7 had never informed them about the injunction order passed in favour of the appellant. Thus, they are the *bonafide* purchasers for valuable consideration and possession has been taken over by the respondents 1-2 since 2004 subsequent to which, they have renovated the land and installed a pump there as well.
14. Mr. Rameshwar Singh Malik, Sr. Adv on behalf of the appellant/plaintiff would on the other hand submit that the High Court committed a grave error in reversing the concurrent findings of the Courts below. The transaction *qua* the suit property was executed by the respondents after the appellant obtained an order of temporary injunction from the Trial Court, hence the entire transactions would be hit by *lis pendens* given under Section 52 of the Act of 1882. Even otherwise, the High Court has upheld the findings of the Courts below that the agreement to sell in favour of the appellant as well as

the acceptance of earnest money was duly proved. Lastly, the respondent nos. 3 and 4 never preferred any appeal against the judgements passed by the lower courts so they have attained finality *qua* them, which is indicative of the collusion between the respondents.

15. In order to appreciate the rival contentions of the parties, it will be appropriate to reproduce the relevant provisions of the Transfer of Property Act, 1882, the benefit of which is being claimed by both parties. Section 41 of the Act of 1882 which governs the principle of *bonafide* purchaser for valuable consideration is reproduced below:

“41. Transfer by ostensible owner.— *Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:*

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

Similarly, Section 52 of the Act of 1882 governs the principle of *lis pendens* and is reproduced below:

“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 proceeding [which is not collusive and] in which any right to immovable 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 purpose 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.]”

16. The object underlying the doctrine of *lis pendens* is for maintaining *status quo* that cannot be affected by an act of any party in a pending litigation. The objective is also to prevent multiple proceedings by parties in different forums. The principle is based on equity and good conscience. This Court has clarified this position in a catena of cases. Reference may be made here of some, such as: ***Rajendra Singh v. Santa Singh, AIR 1973 SC 2537; Dev Raj Dogra v. Gyan Chand Jain, (1981) 2 SCC 675; Sunita Jugalkishore Gilda v. Ramanlal Udhoji Tanna, (2013) 10 SCC 258.***

17. It must be stated here though that by virtue of Section 1 of the Transfer of Property Act, 1882 the provisions of the said Act are not applicable in the States of Punjab, Delhi or Bombay; subject, of course to certain exceptions. Yet, in the case of ***Kanshi Ram v. Kesho Ram, AIR 1961 P&H 299*** the Punjab and Haryana High Court has held that since the explanation to Section 52 is based on equity and good conscience this principle can be applicable. Recently, this Court in ***Shivshankara and Another v. H.P. Vedavyasa Char, 2023 SCC OnLine SC 358*** held as follows:

“....Even if it is taken for granted that the provisions under Section 52 of the Transfer of Property Act are not applicable as such in the case on hand it cannot be disputed that the principle contained in the provision is applicable in the case on hand. It is a wellnigh settled position that wherever TP Act is not applicable, such principle in the said provision of the said Act, which is based on justice, equity and good conscience is applicable in a given similar circumstance, like Court sale etc.....”

In short, there can be no doubt that even if Section 52 of T.P Act is not applicable in its strict sense in the present case then too the principles of *lis pendens*, which are based on justice, equity and good conscience, would certainly be applicable.

18. Keeping this in mind, the explanation to Section 52 which was inserted by the Act No. XX of 1929, clarifies that pendency of a suit shall be deemed to have commenced from the date on which the plaintiff presents the suit. Further, that such pendency would extend till a final decree is passed and such decree is realised.
19. In the facts of the present case, the suit for permanent injunction was filed on 21.07.2003 which is prior to the execution of release deed, i.e., 28.07.2003. Thus, since the release deed is executed after the suit for temporary injunction was filed by the appellant, the alienation made by respondent no. 3 in favour of respondent no. 4 would be covered by the doctrine of *lis pendens*.
20. In other words, the appellant filed a suit for permanent injunction on 21.07.2003 and obtained an order of temporary injunction on 28.07.2003. As on 21.07.2003 the doctrine of *lis pendens* would take its effect. The release deed executed by respondent no. 3 in favour of respondent no. 4 was of 28.07.2003, which is subsequent to the filing of the suit. Respondent no. 4 executed the registered sale deed in favour of respondents 1-2 on 16.06.2004 which is during the operation of the temporary injunction order. Thus, the alienation made by respondents, cannot operate against the interests of the appellant considering he had obtained an order of temporary injunction in his favour. The same position has been held by this Court in a recent decision of ***Shivshankara and Another v. H.P. Vedavyasa Char*** (Supra), which has similar facts in the context of an injunction order.
21. Once it has been held that the transactions executed by the respondents are illegal due to the doctrine of *lis pendens* the defence of the respondents 1-2 that they are *bonafide* purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Act of 1882 is liable to be rejected.
22. We are presently not getting into the deposition of PW-7 though it is unusual and also whether respondents 1-2 had knowledge of the injunction, even though we find no substantial reasons for the High Court to base its entire decision on the deposition of this witness (PW-7). We are going by the settled position that subsequent purchasers will be bound by *lis pendens* and cannot claim they are *bonafide* purchasers because they were not aware of the injunction order, looking at the peculiar facts of the present case.

23. Respondents 1-2 have also claimed they have made substantial alterations to the property by investing money and they have also installed a submersible pump. However, this cannot be the basis for the respondents to claim any sort of compensation or stake any sort of claim against the property. (See: **Sardar Kar Bachan Singh v. Major S Kar Bhajan Singh, AIR 1975 P&H 205**)
24. Consequently, the Release Deed dated 28.07.2003 executed by respondent no. 3 in favour of respondent no. 4 and the Sale Deed dated 16.06.2004 executed by respondent no. 4 in favour of respondents 1-2 is held to be without any legal sanctity. There was an order of temporary injunction operating at the time when these transactions were made and the alienation made by the respondents cannot operate to the disadvantage of the appellant. Since the parties to these proceedings are bound by the doctrine of *lis pendens* the respondents 1-2 cannot take the protection of *bonafide* purchasers for valuable consideration.
25. Consequently, this appeal is allowed, the Judgement dated 03.10.2019 passed by the Punjab and Haryana High Court in RSA No. 2746 of 2012 is set aside. The decree in favour of the appellant is upheld. The respondent no. 3 is directed to accept the balance sale consideration of Rs.5,50,000 from the appellant and execute the agreement to sell dated 10.11.2002 in favour of the appellant, within 3 months from today.

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