

(1985) 11 P&H CK 0021

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1491 of 1985

Thakar Singh

APPELLANT

Vs

Jagat Singh and another

RESPONDENT

Date of Decision: Nov. 26, 1985

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 8

Hon'ble Judges: Rajendra Nath Mittal, J

Bench: Single Bench

Advocate: S.C. Kapila, for the Appellant; G.S. Nagra, for the Respondent

Final Decision: Allowed

Judgement

Rajender Nath Mittal, J.

This is a revision petition by Thakur Singh defendant No, 1 against the order of the District Judge, Hoshiarpur dated 26th March, 1985.

2. Briefly the plaintiff's case is that he purchased the land in dispute from his father Mehnga Singh vide sale deed dated 7th August, 1975. He alleged that the defendants wanted to take its forcible possession. Consequently he filed a suit for injunction restraining the defendants from interfering in his possession.

3. The plaintiff also filed an application for ad-interim injunction which was contested by defendant No. 1, who pleaded that he entered into an agreement of purchase regarding 14 Kanals 11 Marias of land, which included the land in dispute, with Mehnga Singh prior to 1971. The vendor failed to execute the sale deed in his favour. Consequently he filed a suit for specific performance which was decreed in his favour on 21st April, 1973. After the passing of the decree, Mehnga Singh refused to comply with it. Therefore, the Court, appointed the reader of the Court to execute a sale deed in favour of the defendant-petitioner. The sale deed was executed by him on 1st June, 1977. It is further averred that the plaintiff had filed two civil suits earlier for the same relief and the same had been dismissed.

Consequently the plaintiff was, estopped from filing the suit by his act and conduct. It is also pleaded, that the sale was a collusive one between the plaintiff and defendant No. 2, his father. The sale in favour of the plaintiff is also hit by rule of his pendens. The plaintiff had filed objections in the executing Court on similar grounds but the same were rejected.

4. The trial Court held that the plaintiff had no prima facie case. Consequently it dismissed the application. On appeal the District Judge reversed the finding of the trial Court and granted ad-interim injunction. Defendant No. 1 has come up in revision to this Court.

5. It is contented by Mr. Kapila that the plaintiff had no prima facie case as he purchased the land in dispute when a decree regarding this land and some other land had been passed against Menhga Singh respondent. The sale deed was executed by Mehnga Singh in favour of the plaintiff who is his son in order to defend the rights of the petitioner. According to him, the sale is also violative of rule of his pendens. On the other hand, the learned counsel for the respondent has argued that the plaintiff is in possession of the land and his possession should not be disturbed till the decision of the suit. If ad-interim injunction is not issued in his favour, he will suffer irreparable injury.

6. I have duly considered the arguments of the learned counsel. It is well settled that for granting temporary injunctions the following three principles should be taken into consideration. Firstly, that the person claiming the relief has a prima facie case and there is probability of his being entitled to the relief asked for by him; secondly, that he is likely to suffer irreparable injury if injunction is not granted |to him and thirdly, that balance of convenience is in his favour, that is, if the injunction is not granted, the comparative mischief will be greater than that which is likely to arise if it is granted.

7. Now it is to be seen whether the plaintiff was entitled to the ad-interim injunction taking into consideration the aforesaid principles. It is, therefore, to be found out in the first instance whether the plaintiff had got a prima facie case or not. The facts have been given in detail above. It is not disputed that a decree for specific performance of land measuring 14 Kanals 11 Marlas was passed by the Court on 21st April, 1973 in favour of the defendant. The said land includes the land in dispute. Thereafter this defendant-petitioner started execution of the decree and prayed to the Court that a sale deed be got executed from Mehnga Singh judgment-debtor. The latter refused to comply with the direction of the Court and consequently the reader of the Court was appointed to execute the sale deed in his favour which he did on 1st June, 1977. During that period the plaintiff, who is the son of the Judgment-debtor, got the sale deed executed regarding the land in dispute on 7th August, 1985. It is thus evident that the sale deed was got executed after the passing of the decree. The transfer prima facie appears to have been made mala fide with a view to delay the execution proceedings. What is the effect of the

sale during the pendency of the litigation has been dealt with by Story in his treatise "On Equity", 3rd Edition, at page 166 as follows :

Ordinarily, it is true that the judgment of a court binds only the parties and their privies in representation or estate. But he who purchases during the pendency of an action, is held bound by the judgment that may be made against the person from whom he derives title. The litigating parties are exempted from taking any notice of the title so acquired; and such purchaser need not be made a party to the action. Where there is a real and fair purchase, without any notice, the rule may operate very hardly. But it is a rule founded upon a great public policy for otherwise, alienations made during an action might defeat its whole purpose, and there would be no end to litigation. And hence arises the maxim, *pendente lite, nihil innovetur*; the effect of which is not to annul the conveyance, but only to render it subservient to the rights of the parties in the litigation. As to the rights of these parties, the conveyance is treated as if it never had any existence; and it does not vary them".

A Division Bench of the Allahabad High Court in [Smt. Ram Peary and Others Vs. Gauri and Others](#), noticing the above observations, held that it may be that the subsequent transferee was entirely ignorant of any right on the part of the contractor, and also of the pendency of the suit filed against the vendor by such contractor, yet as the transfer was made to him by the vendor after the institution of the suit of the contractor and, while it was pending the subsequent purchaser cannot set up against the contractor any right from which his vendor is excluded by the decree. The title of the subsequent purchaser is good against him on the ground of breach of covenant, but against the plaintiff contractor who seeks specific performance of the contract against the vendor, the subsequent transferee can be in no way better position than the vendor himself. The effect of the doctrine of *lis pendens* is not to annul the conveyance but only to render it subservient to the rights of the parties in the litigation. The conveyance in favour of the subsequent purchaser is treated as if "it never had any existence". It is further observed that the conveyance in favour of the subsequent purchaser thus yields to the adjudication of the rights obtained by the contractor, in the consequence of a decree obtained against the vendor in a suit for specific performance of the contract. I am in respectful agreement with the view expressed above. Thus it is clear that if during the pendency of a suit a party alienates the property in dispute, the rights of the purchaser are subservient to the rights of the parties to the litigation and he cannot be allowed to say that he did not know about the litigation. It is true, in some cases it may cause hardship, but if the above principle is not followed, it will become very easy for a losing litigant to defeat the decree likely to be passed in the cause started against him.

8. This view also finds support from a Full Bench judgment of the Lahore High Court in AIR 1946 142 (Lahore) . It was observed therein that a transferee from defendant *pendente lite* being the representative-in-interest to such defendant and being

bound by the decree eventually passed in the suit, by reason of the operation of the rule of his pendens is a representative of the defendant within section 47 and the decree holder can execute the decree against him in the same manner and to the same extent as he could execute it against the original defendant.

9. It is true that the sale deed was executed by the Court in favour of the defendant in the suit for specific performance, after the sale deed had been executed by Mehnga Singh in favour of the plaintiff but that does not make any difference. A decree for specific performance had already been passed in favour of the defendant and thus his right in the property had been crystallised on that date. It has been held by a Division Bench of this Court in Gurdial Singh and others v. Sewa Singh 1972 P.L.J. 713, that a sale is deemed to take place on the date on which decree for specific performance is passed by the trial Court. I am, therefore, of the view that if the sale deed was executed by the Court late that will not affect the rights of the defendant in any way.

10. It is further noteworthy that the plaintiff and his mother instituted a similar suit against the defendant earlier which was dismissed *ira default* under Order 9, Rule 8 of the CPC on 8th March, 1971. No application for restoration under Order 9, Rule 9 was filed by them. It is provided in that rule that if a suit has been dismissed under Order 9, Rule 8 the plaintiff shall be precluded from bringing a fresh suit on the same cause of action. Thus *prima facie* the present suit is also not maintainable.

11. The matter maybe examined from another angle. The plaintiff by obtaining the injunction restrained the defendant from executing the decree against Mehnga Singh in whose footsteps he stands. In such circumstances injunction is not given by the Court. Reference in this regard may be made to clause (b) of section 41 of the Specific Relief Act which *inter alia* provides that an injunction cannot be granted to restrain any person from prosecuting any proceedings in a Court not subordinate to that from which the injunction is sought. It is also well settled that the plaintiff who obtains a decree should not be deprived of the fruits of his decree by the unsuccessful defendant. Thus the plaintiff is not entitled to obtain injunction restraining the defendant from executing his decree in this case. After taking into consideration all the aforesaid circumstances I am of the view that the plaintiff has got no *prima facie* case in his favour.

12. Further it is to be seen whether the plaintiff would have suffered irreparable injury if the injunction had not been granted to him. It is evident from the facts that the alienation by Mehnga Singh in favour of the plaintiff was *mala fide* and had been made to defeat the decree passed in favour of the defendant. Therefore, it cannot be said that the plaintiff would have suffered irreparable injury in case injunction had not been granted to him.

13. Lastly it is to be seen whether balance of convenience was in favour of the plaintiff or not. The defendant started litigation as far back as 1971 and a decree for

specific performance was passed in his favour on 21st April, 1973. Still he has not been able to get the possession of the land. In the circumstances I am of the view that the injunction granted in favour of the plaintiff caused great harm to the defendant. Therefore, balance of convenience is not in favour of the plaintiff-respondent and the learned appellate Court had erroneously held otherwise.

14. For the aforesaid reasons I accept the revision petition with costs, set aside the order of the appellate Court and restore that of the trial Court. Costs Rs. 500/-.