

(2010) 08 P&H CK 0432

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Mahesh Chand and Others

APPELLANT

Vs

Shalimar Town Planners Pvt. Ltd.
and Others

RESPONDENT

Date of Decision: Aug. 23, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Judgement

L.N. Mittal, J.

Defendant Nos. 1 to 3 have filed the instant revision petition under Article 227 of the Constitution of India against temporary injunction granted in favour of plaintiff-respondent No. 1 by both the Courts below.

2. Suit has been filed by respondent No. 1 against petitioners (defendant Nos. 1 to 3) and proforma respondent Nos. 2 and 3 (defendant Nos. 4 and 5). Sher Singh and Harbhajan had half share in agricultural land detailed in paragraph 2 of the plaint. Vide sale deed dated 11.04.2002, Harbhajan sold 8 kanals 5 marlas land out of Khewat No. 449, Khata No. 609 to defendant Nos. 1 to 3 and sold 4 kanals 1 marla land out of Khata No. 610 to defendant No. 5. Similarly vide sale deed dated 24.07.2002, Sher Singh sold 8 kanals land of Khata No. 609 to defendant Nos. 1 to 3 and sold 4 kanals land of Khata No. 610 to defendant No. 4. Thus defendant Nos. 1 to 3 purchased 16 kanals 5 marlas land out of Khata No. 609 only and defendant Nos. 4 and 5 purchased 8 kanals 1 marla land out of Khata No. 610. However, defendant Nos. 1 to 3 vide sale deed dated 19.09.2007 sold 5 kanals 8 marlas land out of Khata No. 610 to the plaintiff for Rs. 1,01,25,000/-. Out of it, amount of Rs. 1,20,000/- was paid in cash and the remaining amount by way of cheques. However, the said cheques were lost/misplaced and, therefore, fresh cheques were issued by plaintiff in favour of defendant Nos. 1 to 3 and supplementary sale deed dated

31.01.2008 was executed mentioning this fact. On these averments, the plaintiff sought declaration and cancellation of sale deed dated 19.09.2007 coupled with supplementary sale deed dated 31.01.2008 executed by defendant Nos. 1 to 3 in favour of plaintiff. Along with suit, the plaintiff moved application for temporary injunction restraining defendant Nos. 1 to 3 from encashing the aforesaid cheques of sale consideration during pendency of the suit.

3. Defendant Nos. 1 to 3 inter alia pleaded that their vendors Harbhajan and Sher Singh being co-sharers had no power to sell specific or particular portion of the land as the joint land had not been partitioned and thus defendant Nos. 1 to 3 had not purchased land from Khata No. 609 only and similarly defendant Nos. 4 and 5 have not purchased land of khata No. 610 only and it was in fact sale of share of joint land and, therefore, the impugned sale deed executed by defendant Nos. 1 to 3 in favour of the plaintiff is legal and valid and defendant Nos. 1 to 3 are entitled to encash the cheques of the sale consideration issued in their favour by the plaintiff.

4. Learned Additional Civil Judge (Senior Division), Faridabad vide impugned order dated 05.08.2008 allowed the plaintiff's application for temporary injunction and restrained defendant Nos. 1 to 3 from encashing the cheques in question till disposal of the suit. Appeal against the said order preferred by defendant Nos. 1 to 3 has been decided by learned Additional District Judge, Faridabad vide impugned judgment dated 10.01.2009 thereby partly modifying the order of the trial Court and directing the plaintiff to revalidate the cheques in question or to issue fresh cheques one week prior to the expiry of the validity period of the cheques and subject to this condition, the injunction order shall continue and in the event of failure to comply with the condition, the injunction order shall stand vacated.

5. I have heard Learned Counsel for the parties and perused the case file.

6. Learned Counsel for the petitioners reiterated the contention that Khewat No. 449 has not been partitioned and, therefore, the petitioners became co-sharers in the entire khewat and had right to alienate the land of khata No. 610 as well in lieu of share in the entire khewat. On the other hand, Learned Counsel for respondent No. 1-plaintiff contended that defendant Nos. 1 to 3 purchased land of khata No. 609 only and, therefore, they had no right to sell the land of khata No. 610 which had been purchased by defendant Nos. 4 and 5 and consequently, the impugned sale deed executed by defendant Nos. 1 to 3 relating to land of khata No. 610 in favour of the plaintiff is null and void and defendant Nos. 1 to 3 have no right to encash the cheques of sale consideration of the said sale deed.

7. I have carefully considered the rival contentions. It is worth mentioning that defendant Nos. 1 to 3 have also instituted a suit against defendant Nos. 4 and 5 and the plaintiff in respect of the suit land. In that suit, defendant Nos. 4 and 5 have made counter claim for cancellation of the same impugned sale deed dated 19.09.2007 executed by defendant Nos. 1 to 3 in favour of the plaintiff. Admittedly as

per sale deeds vide which all the defendants purchased land from Sher Singh and Harbhajan, defendant Nos. 1 to 3 purchased land of khata No. 609 whereas defendant Nos. 4 and 5 purchased land of khata No. 610. It is to be seen at the time of final adjudication of the suit whether khewat No. 449 stood partitioned or not and whether the sale by Sher Singh and Harbhajan in favour of defendants would be of share in the entire khewat No. 449 or would be sale of land out of khata No. 609 only in favour of defendant Nos. 1 to 3 and sale of land out of khata No. 610 only in favour of defendant Nos. 4 and 5 as specifically recited in the sale deeds. At this stage, prima facie defendant Nos. 1 to 3 as per their own sale deeds dated 11.04.2002 and 24.07.2002 purchased land of khata No. 609 only and not land of khata No. 610. Consequently, prima facie defendant Nos. 1 to 3 had no right to sell the land of khata No. 610 to the plaintiff. As a necessary consequence, defendant Nos. 1 to 3 have no right to encash the cheques of sale consideration of land of khata No. 610. However, interest of the petitioners/defendant Nos. 1 to 3 also has to be safeguarded because disposal of the suit and appeal, if any that may be preferred, would take long time. Consequently, if the plaintiff's suit is ultimately dismissed, the defendant Nos. 1 to 3 would remain deprived of the sale consideration during the pendency of the suit and appeal if any and the plaintiff would get undue advantage at the expense of defendant Nos. 1 to 3 by retaining the balance sale consideration of more than Rs. 1,00,00,000/-. In these circumstances, ends of justice would be met if plaintiff is directed to add interest at the rate of 10% per annum on the principal amount of the cheques since the dates of issuance of the original cheques, every time the cheques are revalidated or fresh cheques are issued in compliance with judgment of the lower appellate Court. It is ordered accordingly. If while revalidating the cheques or while issuing fresh cheques next time or any time thereafter, plaintiff fails to add interest amount as aforesaid, the injunction order shall stand vacated automatically.

8. With aforesaid modification, the instant revision petition stands disposed of accordingly. However, nothing observed hereinbefore shall be construed as an expression of opinion on the merits of the suit.