

(2014) 07 P&amp;H CK 0754

## High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 2759 of 2014 (O&amp;M)

Prem Lata

APPELLANT

Vs

The Mansa Central Co-operative  
Bank Ltd.RESPONDENT

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**Date of Decision:** July 18, 2014**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120B, 409, 420, 467, 468

**Hon'ble Judges:** Arun Palli, J**Bench:** Single Bench**Advocate:** M.S. Viridi, Advocate for the Appellant**Final Decision:** Dismissed

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**Judgement**

Arun Palli, J.

Suit filed by the plaintiff was decreed by learned trial Court vide judgment and decree, dated 23.08.2013. Appeal preferred against the said decree was accepted by the learned First Appellate Court, vide judgment and decree dated 28.03.2014. That is how the plaintiff is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

2. In short, the case set out by the plaintiff was that she was the owner in possession of 670/32000 share of land measuring 16 Kanal, detailed in the plaint, whereupon a residential house was constructed. It was averred that the plaintiff had purchased the said property from Nirmala Devi D/o Mohinder Pal vide sale deed No. 618 dated 12.5.2009 for consideration. Thus, plaintiff claims to be the owner in possession of the house in question. It was however, maintained that plaintiff was not dealing in any manner with the defendants nor had obtained any loan or owed any debt to the defendants. Yet, defendants were bent upon to proceed against her house and get it auctioned.

3. Defendants in defence pleaded, inter-alia, that the husband of the plaintiff namely Anil Kumar had committed fraud with defendant No. 1. FIR No. 67 dated 17.08.2009, Police Station Boha, under Sections 420, 409, 467, 468, 120B IPC was registered. And even plaintiff was arrested in the said case as accused. It was maintained that the plaintiff and her husband Anil Kumar had purchased the suit property out of the embezzled amount. Further, defendants could recover the amount by auctioning the plot.

4. On an analysis of the matter in issue and the evidence on record, learned trial Court arrived at a conclusion that plaintiff was the owner in possession of the suit property, pursuant to a sale deed Ex. P-1. Injunction being claimed by the plaintiff was resisted on the ground that, suit property was purchased by the plaintiff out of the money she and her husband had got by committing fraud. It was observed, that the defendants had led no evidence to establish that the amount used for purchasing the said property by the plaintiff was indeed got by her by fraud. Documents Mark-A to Mark-O were held to have not been proved in accordance with law. It was observed that DW-1 Pritpal Singh, Manager of Mansa Central Co-operative Bank Ltd., had stated in his cross-examination that plaintiff was not the customer of the Bank and they did not want to proceed against her property forcibly or illegally. Resultantly, suit was decreed by judgment and decree dated 23.08.2013 and the defendants were permanently restrained from proceeding against plaintiff in respect of suit property except by due course of law.

5. Being dissatisfied with the said decree, defendants preferred an appeal. Learned First Appellate Court reviewed the matter in issue, evidence on record and on an analysis thereof concluded that indisputably suit property was owned by the plaintiff. In a suit filed by the plaintiff she had claimed a decree for injunction simpliciter. Thus, it was not a question to be decided in the suit, as to by what means the suit property was purchased by the plaintiff. Therefore, the principle question to be adjudicated was, as to whether the suit for injunction by the plaintiff was maintainable or not. Learned First Appellate Court took cognizance of the copy of award Mark-B dated 10.09.2010, passed by the Deputy Registrar, Co-operative Society, vide which recoveries were ordered to be made against the plaintiff and her husband. Consideration of the award revealed that Anil Kumar has purchased benami property with the amount he had acquired by fraud and the amount be recovered by auctioning the said property. Revision filed by the plaintiff and her husband against the said award was dismissed vide order Mark-A dated 10.06.2013, passed by Special Secretary, Co-operative, Punjab. Copies of the orders/awards Mark-C to Mark-O also revealed that the parties were litigating before the concerned authorities of Co-operative Societies. It was observed that the awards passed against the plaintiff and her husband were not set aside. The only argument advanced on behalf of the plaintiff was that awards/orders from Mark-A to Mark-O could not be read in evidence as these were not exhibited documents. Learned First Appellate Court repelled the said contention and observed that the documents

Mark-A to Mark-O were the attested copies. The said awards/orders were passed by the authorities under the Cooperative Societies Act and were, therefore, per se admissible in evidence. It was observed that even if the documents in question were only marked, the Court could always take judicial notice thereof. It was found that in these awards/orders recovery was ordered to be effected and pursuant to the said award, the defendants were auctioning the suit property in due course of law. Thus, the plaintiff could not seek injunction restraining the defendants from auctioning the suit property and the said suit was not maintainable. Resultantly, the First Appellate Court dismissed the appeal vide judgment and decree dated 28.03.2014.

6. I have heard the learned counsel for the appellant and examined the judgments rendered by both the Courts below.

7. It is conceded that plaintiff and her husband were parties to the award Mark-B dated 10.09.2010 passed by the Deputy Registrar, Co-operative Society, Mansa and revision petition against the said award was dismissed vide order dated 10.06.2013 (Mark-A). Documents Mark-C to Mark-O substantiate that the parties to the lis were litigating before the concerned authorities regarding the payment of award money. Concededly, the award dated 10.09.2010 (Mark-B) has not been set aside and has, thus, attained finality. The genuineness, authenticity and veracity of these documents have not been disputed by the learned counsel for the appellant. Indisputably, it is pursuant to these awards/orders, defendants were taking measures to auction the suit property in due course of law. That being so, no ground, least plausible in law, exists to interfere with the decree being assailed in the present appeal.

8. In the wake of the position as set out above and the conclusion that has been arrived at by learned First Appellate Court, no question of law, much less substantial question of law, arises for consideration in the present appeal, the same being devoid of merit, is accordingly, dismissed.