

(2014) 08 P&H CK 0296

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 6928 of 2013

Paramjit Singh Nijjar

APPELLANT

Vs

Amarjit Singh

RESPONDENT

Date of Decision: Aug. 4, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Transfer of Property Act, 1882 - Section 52

Hon'ble Judges: Bharat Bhushan Parsoon, J

Bench: Single Bench

Advocate: Amarjit Markan, Advocate for the Appellant; M.L. Sarin, Senior Advocate and Nitin Sarin, Advocate for the Respondent

Final Decision: Allowed

Judgement

Dr. Bharat Bhushan Parsoon, J.

Plaintiffs, Paramjit Singh Nijjar and two others had filed a suit against the defendants wherein specific performance of the agreement to sell dated 17.09.2005 was claimed. The respondents-defendants-owners during pendency of the suit were venturing to dispose of the property in dispute. To avoid intervention of third party rights during the pendency of the suit, an application under Order XXXIX Rules 1 and 2 was filed by the plaintiffs but before the said application was decided, apprehended transfer to create third party rights was made by the respondents-owners in favour of respondents No. 1 to 3 (herein), fresh application was moved seeking injunction against the subsequent vendees for restraining them from further alienation of the property at their end so as to avoid creation of third party interest therein. This application was allowed on 06.04.2013. Subsequent vendees against whom the said order was made went in appeal wherein holding that the second application for ad-interim injunction was not maintainable, terming order of 06.04.2013 of the trial court to be perverse and against the law, setting aside the same, the application was dismissed, allowing the appeal with costs. It is

against this order of 06.11.2013 of the appellate authority that present revision petition has been preferred by the petitioners-plaintiffs.

2. It is claimed that the appellate authority misconstrued the facts as also attending circumstances and passed the impugned order in derogation of the attending circumstances. It is claimed that impugned order not only runs contrary to the facts and circumstances but also runs divergent with the earlier order of 11.04.2012 (Annexure P-7) of the appellate authority itself, wherein liberty had been granted to the petitioners-plaintiffs to pursue their application dated 09.10.2010 (Annexure P-6) against defendants No. 3 to 5 (now respondents No. 1 to 3 in the petition herein). It is claimed that observations of the appellate authority while passing the impugned order that filing of subsequent application under Order XXXIX rules 1 and 2 was barred by res-judicata, also is wrong.

3. Countering the revision petition plea of the respondents-vendees is that there is no ground to interfere with the order of the First Appellate Court as there is no irregularity or illegality in the order. Reference has been made to [The Managing Director \(MIG\) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, ; Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim and Others,](#) and [Maman Chand Vs. Smt. Kamla, .](#) It is claimed that earlier adjudication of the application provided no ground for the petitioners-plaintiffs to agitate the same issue when the matter had become final. Support has been sought from [Satyadhyana Ghosal and Others Vs. Sm. Deorajin Debi and Another,](#) Y.B. Patial & Ors. Vs. Y.L. Patil (1976) 4 SCC; [Bhanu Kumar Jain Vs. Archana Kumar and Another,](#) and [Ajay Mohan and Others Vs. H.N. Rai and Others,](#)

4. Hearing has been provided to the counsel for the parties while going through the grounds of the revision and impugned orders as also while appreciating the facts and circumstances of the case.

5. Concedingly defendants No. 1 and 2, who are respondents No. 4 and 5 in the present petition, were the owners of the property in litigation. Agreement to sell dated 17.09.2005 allegedly entered into by them with the petitioners-plaintiffs did not materialise, the sale deed as promised was not executed, bringing the petitioner-plaintiffs in the court where they filed a suit seeking specific performance of the agreement to sell dated 17.09.2005.

6. Without going into the question as to whether Rs. 30,00,000/- were paid as claimed by the owners-respondents No. 4 and 5 or whether payment of Rs. 50,00,000/- as earnest money had been made by the petitioners-plaintiffs, it remains a fact that an application under Order XXXIX Rules 1 and 2 had been moved by the petitioners-plaintiffs against the original defendants viz. respondents No. 4 and 5 (now the petitioners herein) for seeking restraint against alienation of the suit property.

7. Earlier ever application under Order XXXIX Rules 1 and 2, was moved when the matter was between the petitioners-plaintiffs and Jasmer Singh and his wife i.e. the defendants-owners of the land. Citing protection of doctrine of lis-pendence available to the plaintiffs, the trial court had further noticed that no such temporary relief was available against the then existing defendants as they had already sold the suit property with possession and thus had neither possession nor ownership with them. With these observations the said application was dismissed on 08.03.2010. The appeal of the petitioners-plaintiffs against the said order of the lower court was dismissed, observing, that the defendants had already sold the property delivering the possession thereof as well and that principle of lis-pendence would apply. Since the subsequent vendees had not been impleaded as yet, the appellants-plaintiffs were given liberty to pursue their application under Order XXXIX rules 1 and 2 against the subsequently added defendants and the lower court was also given the liberty to decide such application in accordance with law without being prejudice by observation of the appellate court in the judgment rendered on 11.04.2012.

8. After impleadment of subsequent vendees, the petitioners-plaintiffs moved the lower court seeking relief against the subsequent vendees which was granted restraining the subsequently added defendants, as vendees, from alienating any part of the suit property as also against raising of any new construction or change of nature of the existing structure. Operative portion of the said order is appended as below:-

7. After hearing the rival contentions of both the sides. I am convinced with the submissions raised by the Ld. Counsel for the plaintiffs. It is well settled law that merely the execution of the agreement to sell in favour of the proposed vendee does not confer any right. But, in the present case the apprehension of the applicants-plaintiffs is that they have paid an earnest money of Rs. 50 lacs to the defendants and if any third party interest is created, then, they will suffer an irreparable loss. I am also convinced with the submission raised by the Ld. Counsel for the plaintiffs that the plaintiffs have strong *prima facie* case in their favour and the balance convenience also lies in favour of the applicants-plaintiffs. Therefore, keeping in view of my above said discussion, the application under consideration is allowed and the defendants No. 3 to 5 are restrained from alienating any part of the suit property, raising any new construction, changing the nature of existing structure, creating any third party charge or lien over the suit property, letting out the whole or any part of the suit property and putting any third in possession on any part of the suit property till the pendency of the suit.

9. While deciding the appeal on dismissal of the earlier application under Order XXXIX Rules 1 and 2, when subsequent vendees had yet not been impleaded as parties to the litigation, the Appellate Court had specifically given liberty to the petitioners-plaintiffs to pursue their application under Order XXXIX Rules 1 and 2

against the vendees to be subsequently added and liberty had also been granted to the lower court to decide the same without being influenced by the earlier orders on record and the lower court had then decided the same interalia passing an injunction order against the subsequently added defendants in the above terms.

10. It is thus evident that the appellate authority in passing the impugned order was clearly in error when it accepted the appeal and reversed the order of the lower court, holding, that the application before the lower court was not maintainable being barred by res-judicata. It is strange that when the appellate authority had kept the matter alive with regard to relief of injunction claimed by the plaintiffs against the subsequently added vendees-defendants vide order dated 11.04.2012 and the said court had also given the liberty to the lower court to decide the same without being prejudiced from the observations made in the judgment dated 11.04.2012 of the appellate court, there was no applicability of the principle of res-judicata.

11. Counsel for the petitioners-plaintiffs has cited [Julien Educational Trust Vs. Sourendra Kumar Roy and Others,](#) urging that vendees subsequently impleaded as parties to the suit can be restrained from changing the nature of the suit land as also from alienating or encumbering the property further. Citing [Ajit Kaur Vs. Phuman Singh,](#) it has been urged that principle of lis-pendence as sought u/s 52 of the Transfer of Property Act, 1882, by itself does not make the provisions of Order XXXIX Rule 1 and 2 redundant and the same can be put into operation keeping in view the peculiar circumstances of each case. Support has also been sought from [Julien Educational Trust Vs. Sourendra Kumar Roy and Others, Maharwal Khewaji Trust \(Reqd.\), Faridkot Vs. Baldev Dass, and Smt. Rita Toor Vs. Logical Developers Pvt. Ltd.,](#)

12. The appellate authority completely overlooked its earlier observations in its order dated 11.04.2012 resulting in passing of the impugned order prejudicing the rights of the plaintiffs.

13. Consequently, the impugned order dated 06.11.2013, is directly in conflict with the earlier order of the appellate authority of 11.04.2012 and apparently had been passed in oblivion of the said findings.

14. Setting aside the same, the matter is sent back to the appellate authority viz. Additional District Judge, Hoshiarpur to decide the appeal afresh keeping in view the developments which took place earlier and particularly the observations made by the said authority in its order dated 11.04.2012 so as to avoid conflict between two findings of the appellate authority. The revision petition is accepted in the above terms.

15. Since the case has been remanded to the appellate authority for a fresh decision, counsel for the petitioners-plaintiffs may take up all the pleas taken in this petition as also may pursue their claim by citing authorities as have been cited by them

herein.