

(2015) 08 P&H CK 0150

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 796 of 2002, CR No. 3210 of 1996 and CR No. 3873 of 1996 (O&M)

Sukhwinder Singh and
Others

APPELLANT

Vs

Harbans Singh and
Others

RESPONDENT

Date of Decision: Aug. 28, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 21 Rule 100, Order 21 Rule 102, Order 21 Rule 98, Order 23 Rule 1, Order 23 Rule 1(4)#Registration Act, 1908 - Section 47, 61#Specific Relief Act, 1963 - Section 22 (2)#Transfer of Property Act, 1882 - Section 54

Citation: (2015) 08 P&H CK 0150

Hon'ble Judges: Raj Mohan Singh, J

Bench: Single Bench

Advocate: Vikas Bahl, Senior Advocate and Parvinder Singh, for the Appellant; Sudeep Mahajan and Manju Saini, Advocates for the Respondent

Final Decision: Allowed

Judgement

Raj Mohan Singh, J

Vide this common judgment, three revision petitions i.e. Cr Nos. 796 of 2002, 3210 of 1996 and 3873 of 1996 are

being disposed of. Facts are being taken from CR No. 796 of 2002.

2. This revision petition has arisen from the order dated 19.1.2002 dismissing the objections filed by the petitioner.

3. Chanan Singh was owner of 41 kanals 8 marlas of land comprised in khasra No. 34//4/2 (2-4), 5 (7-4), 6 (8-0), 8 Min (4-0) and khasra No.

34//8 Min (4-0), 7(8-0), 9(8-0).

4. On 16.1.1986 Raghubir Singh entered into an agreement to sell with aforesaid Chanan Singh in respect of 21 kanals 8 marlas of land comprised

in khasra No. 34//4/2 (2-4), 5 (7-4), 6(8-0), 8 Min (4-0) situated in village Jhungian Maha Singh Tehsil Phillaur.

5. Raghubir Singh entered into another agreement to sell with Chanan Singh in respect of 20 kanals of land comprised in khasra No. 34//8 Min (4-

0), 7(8-0), 9(8-0) situated in the same village.

6. In respect of first agreement to sell, a sale deed was executed on 2.4.1986 in favour of petitioner and one Madhujit Singh in respect of land

mentioned in first agreement i.e. 21 kanals 8 marlas.

7. In respect of second agreement, sale deed was executed on 19.5.1986 in respect of khasra No. 34//8 Min (4-0), 7(8-0), 9(8-0). The said sale

deed was presented before Sub Registrar on 12.1.1987, but the same was registered on 25.5.1987. On 7.5.1987, a suit for specific performance

was filed by respondent No. 1. In the suit, relief was sought to the effect that the land comprised in all the khasra numbers was the subject matter

of agreement to sell with respondent No. 1. Apparently, in respect of second agreement, sale deed was written prior to filing of the suit. It was

presented before the Sub Registrar on 12.1.1987 i.e. before filing of the suit, but the same was registered only on 25.5.1987 i.e. after filing of the

civil suit on 7.5.1987 by respondent No. 1.

8. On 5.8.1987, petitioner was impleaded as defendant by respondent No. 1 in the suit filed by him against respondent No. 2. Petitioner filed his

written statement on 17.1.1990.

9. On 23.1.1990 counsel for respondent No. 1 made a statement before the Court that he does not want to proceed with the suit against the

petitioner. Accordingly, name of the petitioner was deleted from the array of the defendants in the suit.

10. Suit of defendant No. 1 was decreed by the trial Court on 7.2.1990. Judgment debtor/ respondent No. 2 filed objections and those were

dismissed by the trial Court on 25.3.1996. Civil Revision No. 3210 of 1996 is pending adjudication against the order dated 10.6.1996 passed by

the Executing Court to appoint the Local Commissioner for executing the sale deed. Civil Revision No. 3873 of 1996 filed by respondent No. 2 is

also pending, which was ordered to be heard along with Civil Revision No. 3210 of 1996.

11. Petitioner also filed objections through his attorney Raghubir Singh. On 19.1.2002 the objections filed by the petitioner have been dismissed by

the Executing Court. The present revision petition No. 796 of 2002 has arisen from the order dated 19.1.2002 and the same was ordered to be

heard along with Civil Revision No. 3210 of 1996.

12. Learned senior counsel for the petitioner has contended that once the suit was withdrawn qua the petitioner on 23.1.1990, the decree in

question is not executable qua the petitioner. Secondly, the sale deed dated 2.4.1986 was admittedly prior to filing of the suit for specific

performance. The land involved in said sale deed was 21 kanals 8 marlas comprised in khasra No. 34//4/2 (2-4), 5 (7-4), 6(8-0), 8Min (4-0).

The said land could not have been made subject matter of suit, nor any decree could have been passed in respect thereof. After executing the

aforesaid sale deed, Chanan Singh was having no saleable interest in the land. The decree dated 7.2.1990 involving the aforesaid land is wholly

inexecutable. Thirdly, even in respect of second agreement of the petitioner, sale deed was duly scribed and executed on 19.5.1986 and the same

was duly presented before the Sub Registrar on 12.1.1987 i.e. before the date of filing of suit for specific performance by respondent No. 1 on

7.5.1987. Registration of sale deed on 25.5.1987 would take effect from the date of execution of the same i.e. 19.5.1986. In respect of aforesaid

contention, learned counsel cited Thakur Kishan Singh (dead) Vs. Arvind Kumar, AIR 1995 SC 73 : (1998) 1 CTC 241 : (1997) 10 JT 611 :

(1994) 4 SCALE 176 : (1994) 6 SCC 591 : (1994) 3 SCR 199 Supp : (1995) 1 UJ 401 .

13. Learned counsel further contended that the suit was withdrawn qua the petitioner without seeking permission of the Court for filing a fresh suit

on the same cause of action and, therefore, subsequent action involving interest of the petitioner would be barred on account of principle laid down

under Order 23 Rule 1 CPC. Dismissal of the suit unconditionally qua the petitioner was neither on account of any compromise nor any permission

was sought by the plaintiff of the suit for filing fresh suit on the same cause of action, therefore, subsequent cause in respect of interest of the

petitioner is barred by Order 23 Rule 1 (4) CPC. In support of aforesaid contention, learned counsel relied upon Anand Dev Vs. Suraj Bhan,

(2012) 166 PLR 83 and Hari Ram Vs. Lichmaniya and Others, AIR 2003 Raj 319 : (2003) 4 WLC 426 .

14. Learned counsel further submitted that the alleged decree, which is sought to be executed against the petitioner, is totally vague and

inexecutable in nature and the same cannot be enforced against the petitioner. In support of aforesaid contention, he cited Arun Lal and Others Vs.

Union of India (UOI) and Others, AIR 2011 SC 506 : (2010) 12 SCALE 572 : (2010) 14 SCC 384 .

15. A bare perusal of judgment and decree dated 7.5.1987 would show that reference has been made in respect of sale of land in favour of the

petitioner to the extent of 21 kanals 8 marlas of land and it was observed that even after the same held to be in favour of the petitioner, 18 kanals

of land was still left with Chanan Singh. According to learned counsel for the petitioner, such observations are totally perverse inasmuch as that no

such land was left with Chanan Singh as the sale deed dated 2.4.1986 was never assailed. Rather sale deed dated 19.5.1986 was also not

challenged anywhere and the suit against the petitioner was withdrawn subsequently. The subsequent registration of sale deed would relate back to

the date of presentation/ execution. In view of aforesaid, learned counsel submitted that the objections raised by the petitioner should have been

accepted by the Executing Court.

16. On the other hand, learned senior counsel for the respondent vehemently argued that once the agreement to sell is proved, grant of decree for

specific performance is natural consequence of agreement. The alienation was made during subsistence of stay granted by the Court. In this

context, learned counsel referred to para 14 of the amended plaint and para 15 (c) of the plaint and also drew the attention of the Court towards

written statement filed by the petitioner as defendant No. 2 in the suit. Reply to para 14 was to the effect that "" It is a matter of record"" and in

respect of para 15 (c), the reply was to the effect that ""the averments made in this para are denied as incorrect."" Defendant No. 2 was not aware

of any stay order. However, he is not at fault as he was a bona fide purchaser for valuable consideration and he was totally unaware of the

pendency of any litigation between the plaintiff and defendant No. 1. Learned counsel relied upon Himalayan Cooperative Group Housing Society

Vs. Balwan Singh(2015) 9 AD (SC) 501 : AIR 2015 SC 2867 : (2015) 3 RCR(Civil) 394 : (2015) 6 SCALE 731 : (2015) 7 SCC 373 to

contend that the concession/ statement/ admission/ compromise made by lawyer without instructions of the client are not binding on the client. The

lawyer stands in fiduciary relationship to the client and his duties are more demanding than those imposed on other agents. The lawyer was

required to respect the client's autonomy to make such decision in the matter. Any concession given by the lawyer without consulting the client

cannot bind the client. Learned counsel refers to the time at which the statement was made, deleting the petitioner from array of defendants and the

date of decision thereafter.

17. Learned counsel further stated that the scope of objections filed by the petitioner was very narrow. Objections under Section 47 CPC can

only be allowed if decree is found to be void ab initio and nullity and is incapable of execution, whereas, no such situation arises in the present

case. In support of his contention, learned counsel cited Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, AIR 2001 SC 2552 :

(2001) 5 JT 578 : (2001) 4 SCALE 495 : (2001) 6 SCC 534 : (2001) 3 SCR 1129 : (2001) 3 SLJ 432 : (2001) AIRSCW 2674 : (2001) 5

Supreme 278 . Learned counsel further highlighted that execution of sale deed in violation of order of injunction has no legal sanctity. In that

context, he relied upon Jehal Tanti and Others Vs. Nageshwar Singh (dead) through L.Rs., (2013) 7 AD 95 : AIR 2013 SC 2235 : (2013) 6 JT

513 : (2013) 2 RCR(Civil) 968 : (2013) 6 SCALE 272 : (2013) 14 SCC 689 : (2013) AIRSCW 3663 : (2013) AIRSCW 2854). At last

learned counsel relied upon Satyawati Vs. Rajinder Singh and Another, (2013) 5 ABR 395 : (2013) 7 AD 73 : (2013) 116 CLT 1106 : (2013)

10 JT 420 : (2014) 1 RCR(Civil) 324 : (2013) 7 SCALE 371 : (2013) 9 SCC 491 to contend that the Executing Court, while deciding the

objections under Section 47 CPC, is not to consider factors and facts not forming part of judgment and decree of the trial Court.

18. Learned counsel also refer to Order 21 Rule 102 CPC to say that transferee pendente lite has no protection in terms of Order 21 Rules 98

and 100 CPC and they are not entitled to put resistance or obstruction in execution of a decree for the possession of immovable property.

19. I have considered the rival submissions advanced by both the parties. Apparently the sale deed executed on 2.4.1986 is much prior in point of

time than the filing of the suit on 7.5.1987. The land involved therein cannot be presumed to be under lis between the parties at the time of entering

into any agreement to sell and consequent filing of the suit thereof. The execution of sale deed dated 19.5.1986, which was presented before the

Sub Registrar on 12.1.1987 is a factor to be debated in the light of existing legal position.

20. According to learned counsel for the petitioner, under Section 47 of the Registration Act, registered document shall operate from the time

which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. In case

of lease deed, in Thakur Kishan Singh's case (supra), the Hon"ble Apex Court has held that a document so long it is not registered is not valid, yet

once it is registered, it takes effect from the date of its execution. Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, AIR 1961 SC

1747 : (1962) 2 SCR 474 was relied therein. Before the Apex Court question was of legality of lease deed as the same was executed on

5.12.1949 and was registered on 3.4.1950. The Court held that he became owner by operation of law on the date when the deed was executed.

The case law referred in the aforesaid judgment of the Apex Court i.e. Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, AIR 1961

SC 1747 : (1962) 2 SCR 474 , decided the proposition that under Section 54 of the Transfer of Property Act, sale of a tangible valuable

immovable property of value of Rs. 100/- and more can only be made by a registered instrument. The registration under the Registration Act is not

complete till the document has got registered and has been copied out in the record of Registration office as provided under Section 61 of the Act.

Section 47 of the Registration Act has nothing to do with the completion of registration and, therefore, nothing to do with the completion of a sale,

when the instrument is of the sale. The Court held in that context that a sale which is not completed until the registration of the instrument cannot be

said to have been completed earlier because by virtue of Section 47 of the Act, the instrument by which it is effected after it has been registered,

commences to operate from an earlier date. The aforesaid judgment was relied in Ramdeo and Another Vs. Dy. Director of Consolidation, U.P.,

Lucknow and Others, AIR 1968 All 262 : (1967) 37 AWR 578 , wherein, it was held that a sale which is admittedly not completed until the

registration of the instrument of sale can be completed, cannot be said to have been completed earlier merely because under Section 47 of the

instrument by which it is effected, after it has been registered, commences to operate from an earlier date. This was observed so because in case of

sale deed, title passes only on registration of the sale deed. The sale deed is required to be compulsorily registered, whereas, in case of Will and

lease, the documents are not required to be compulsorily registered and, therefore, subsequent registration would take effect from the date of

execution. A fine distinction has been sought to be made that a document which is required to be compulsorily registered in law has to be given

effect from the date of its registration, whereas in case of Will, lease and other instruments, which are not required to be compulsorily registered,

the subsequent registration would take effect from the date of its execution.

21. Since the judgement in Thakur Kishan Singh (dead) Vs. Arvind Kumar, AIR 1995 SC 73 : (1998) 1 CTC 241 : (1997) 10 JT 611 : (1994) 4

SCALE 176 : (1994) 6 SCC 591 : (1994) 3 SCR 199 Supp : (1995) 1 UJ 401 has been rendered after due consideration of Ram Saran Lall and

Others Vs. Mst. Domini Kuer and Others, AIR 1961 SC 1747 : (1962) 2 SCR 474 and the proposition set out therein is in respect of document

irrespective of its kind and therefore, the subsequent registration of sale deed on 25.5.1987 would take effect from 12.1.1987 when it was

presented before Sub Registrar for its registration even though it was executed on 19.5.1986. Factum of its presentation before Sub Registrar

further adds to the strength on the proposition that after its execution when it was presented before Sub Registrar on 12.1.1987, parties to the sale

deed had no obvious control over the proceedings which were likely to be taken by the authorities under the Registration Act. The aforesaid

aspect if read in conjunction with withdrawal of suit against the petitioner without seeking permission of the Court to file fresh and without

explaining the admission at a subsequent stage or to withdraw the said admission at any subsequent point of time, it would be taken to be an

unconditional withdrawal. A litigant should not be allowed to reagitate the same cause of action if once he has availed an opportunity to approach

the Court in the context thereof. The relinquished claim amounts to lost claim and the plaintiff could not have re-agitated the same at the time of

withdrawal of suit qua the petitioner. No background was shown as to why the suit was withdrawn qua the petitioner. The cause of the respondent

vis-a-vis the claim of the petitioner is barred by Order 23 Rule 1 (4) CPC. The plea raised by the respondent that there should have been express

authority in favour of the lawyer, making statement for withdrawal of the suit qua the petitioner has its own application but in different fields.

22. In the instant case, after withdrawal of the suit against the petitioner, no act was done by the respondent in the context of Withdrawal of such

concession or admission at any point of time. Even in the light of controversy involved, it could not have been possibly the result of legal

proposition involved in the case but denial of such relief to the petitioner on the strength of absence of the authority with the lawyer to make such

concession is wholly erroneous at this stage, particularly when respondent did not agitate the issue later on by way of any explanation of

withdrawal of such concession.

23. The contention of learned counsel for the respondent vis-a-vis para Nos. 14 and 15 (c) of the amended plaint and reply thereof is also of no

consequence as nothing incriminating has been admitted by the petitioner. The denial as projected in the written statement cannot be taken to be a

proof of knowledge. This piece of evidence, if read in coherence with the withdrawal of suit qua the petitioner, then there would be no room for

any further interpretation, even if knowledge is attributable to the petitioner in the said context. Once there was no lis qua the petitioner, no

knowledge or applicability of Order 21 Rule 102 CPC can be pressed into service. No lis pendens can be presumed qua the petitioner by any

stretch of imagination. At last, learned counsel for the petitioner refers to the decree in favour of respondent which is qua one of the defendant, no

possession or direction has been granted in the decree. Learned counsel for the petitioner stated that unless and until there is lawful partition by

metes and bounds, no decree can be granted or enforced. In that context, learned counsel referred to Thomson Press (India) Ltd. Vs. Nanak

Builders and Investors P. Ltd. and Others, (2013) 10 AD 57 : AIR 2013 SC 2389 : (2013) 2 CTC 104 : (2013) 3 JT 289 : (2013) 171 PLR 26 :

(2013) 2 RCR(Civil) 875 : (2013) 3 SCALE 26 : (2013) 5 SCC 397 : (2013) AIRSCW 1617 of the Specific Relief Act, 1963 and Usha Anand

Vs. CBI, (2006) 132 DLT 402 : (2006) 7 AD Delhi 673 to contend that no Court can grant the relief of possession of land subject matter of the

agreement to sell in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed in the

plaint in terms of Section 22 (2) of the Specific Relief Act.

24. Taking into consideration all the aforesaid facts, I am of the considered view that the objections filed by the petitioner are sustainable in law.

Hence, present revision petitions are allowed for the reasons as mentioned above. Consequently, Impugned order dated 19.1.2002 is set aside.