

**(2016) 12 P&H CK 0186**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** ESA No. 233 of 2016 (O&M)

Sonia Bhatia

APPELLANT

Vs

Jai Gopal Kohli

RESPONDENT

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**Date of Decision:** Dec. 19, 2016

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 10
- Specific Relief Act, 1963 - Section 16
- Transfer of Property Act, 1882 - Section 52

**Citation:** (2017) 2 ICC 368 : (2017) 1 LawHerald 171 : (2017) 1 PLJ 302

**Hon'ble Judges:** Mrs. Rekha Mittal, J.

**Bench:** Single Bench

**Advocate:** Mr. Adarsh Jain, Advocate, for the Appellant

**Final Decision:** Dismissed

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**Judgement**

**Rekha Mittal, J** - This order will dispose of ESA Nos.233 and 234 of 2016 as identical questions of law and fact are involved for adjudication. For brevity, facts are taken from ESA No.233 of 2016.

2. Jai Gopal Kohli (since deceased) now represented by his LRs filed a suit for possession by way of specific performance of an agreement to sell dated 24.12.2001 purported to be executed by Mukund Lal son of late Sh. Atma Ram in respect of property measuring 83 sq. yds. forming part of residential House No.1-D/103, NIT, Faridabad. Later, Smt. Hemlata Bhatia @ Jyoti Bhatia and Surender Singh Bhatia were impleaded as defendants No.2 and 3 in the said suit. The suit was decreed by the trial Court vide judgment and decree dated 07.01.2012. The judgment and decree passed by the trial Court has attained finality upto the High Court of Punjab and Haryana.

3. Jai Gopal Kohli - decree-holder represented by his LRs filed an application for execution of the decree wherein objections were filed by the JDs and third parties namely Sonia Bhatia and Asha Arora. The objections filed by the JDs and third parties were dismissed by the Civil Judge (Sr. Division) Faridabad vide order dated 03.05.2016. The appeals preferred by Asha Arora and Sonia Bhatia were dismissed by the Additional District Judge, Faridabad vide order dated 08.12.2016 and the findings recorded by the Executing Court were affirmed.

4. Counsel for the appellant has assailed the orders passed by the Courts below on several grounds. The first submission made by counsel is that suit filed by Jai Gopal Kohli on 11.09.2003 was dismissed in default on 01.06.2006 and the same was restored on 19.09.2008. It is argued that as no suit was pending in the Court when an award dated 05.09.2006 by the Lok Adalat in respect of the suit property was passed in favour of Hemlata, sale in favour of the appellant by Hemlata by way of registered sale deed dated 20.12.2012 qua area measuring 60.26 sq. yds. is not hit by the principle of lis pendens. In addition, it is argued that the appellant did not have knowledge of pendency of the suit and purchased the property in question after making due enquiries and examining the award passed in favour of Smt. Hemlata, she is entitled to protect her rights in the suit property being a bona fide purchaser for valuable consideration without notice.

5. The second submission made by counsel is that in the suit filed by the decree-holder, he impleaded Hemlata Bhatia @ Jyoti Bhatia and Surender Singh Bhatia as defendants No.2 and 3 and by way of amendment of the plaint on the basis of an application filed under Order 6, Rule 17 CPC on 09.05.2009, he prayed for a decree of declaration that the impugned award bearing No.10651 dated 19.09.2006 in the name of Smt. Hemlata Bhatia and the subsequent impugned agreement to sell dated 23.01.2009 executed by defendant No.2 in favour of Surender Singh Bhatia & defendant No.3 are absolutely wrong, forged and fictitious documents and are not binding upon the plaintiff in any manner whatsoever. According to counsel, no such decree of declaration in respect of the aforesaid award and agreement to sell dated 23.01.2009 was passed in favour of the decree-holder meaning thereby that his prayer in this regard was declined. It is argued with vehemence that as the Court did not grant the relief of declaration qua the aforesaid documents, the decree-holder cannot execute the decree against Hemlata Bhatia and consequently against the present appellant having stepped into the shoes of Hemlata Bhatia.

6. Counsel for the appellant has made a vain attempt to argue that as the decree in favour of the decree-holder is only qua specific performance of contract dated 24.12.2001 without any relief of possession, issuance of warrants of possession by the Executing Court for delivery of possession in pursuance of the sale deed executed through process of the Court is unwarranted and warrants of possession are liable to be recalled.

7. The last submission made by counsel is that as the averments raised in the objection petition give rise to triable issues, the Executing Court was enjoined upon to frame issue(s) and permit the parties to adduce evidence in an exercise to decide the third party objections like an independent suit in the light of provisions of Order 21, Rule 101 CPC. In support of his contention, he has referred to judgment of this Court <i><ß>"Gram Panchayat, Hassanpur v. Jagdish Chand and others", 2007(4) RCR (Civil) 636.</ß</i>

8. I have heard counsel for the appellant, perused the paper-book particularly the orders impugned.

9. At the very outset, it is pertinent to mention that plea of bona fide purchaser for consideration and without notice is not available to a transferee pendente lite. Section 52 of the Transfer of Property Act deals with the doctrine of lis pendens which is expressed in the maxim "ut lite pendente nihil innovetur." There cannot be any dispute that the principle of lis pendens is a principle of equity, good conscious or justice based upon an equitable foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. It has been consistently held by the Courts that transfer pendente lite is neither illegal nor void ab initio but remains subservient to right eventually determined by Court in pending litigation. The decision of the Court in a suit is binding not only on litigating parties but also on those who derive title pendente lite.

10. In the case at hand, admittedly, the appellant purchased a part of the suit property vide sale deed dated 12.01.2011 during pendency of the suit that culminated in the judgment and decree dated 07.01.2012.

11. The question that calls for determination is whether award passed in favour of Smt. Hemlata Bhatia dated 05.09.2006, vendor of the appellant is hit by the principle of lis pendens or otherwise. As per plea of the appellant, suit filed by the decree-holder seeking specific performance of agreement to sell was dismissed on 01.06.2006. The application for restoration of the suit was filed on 17.07.2006 and the same was allowed by the Court on 19.09.2008 and as a result thereof the suit was restored on that day. Counsel for the appellant is not in a position to dispute the settled position in law that restoration of the suit on 19.09.2008 would relate back to the date of application filed on 17.07.2006. That being so, award dated 05.09.2006 passed in favour of Smt. Hemlata Bhatia predecessor-in-interest of the appellant is clearly hit by the principle of lis pendens and, therefore, the appellant cannot escape consequence of the said principle or her being bound by the decree that was eventually passed in favour of the decree-holder. In this view of the matter, the appellant cannot derive any advantage to her contention that either Smt. Hemlata or she herself is not hit by the principle of lis pendens in the present scenario.

12. As the award dated 05.09.2006 passed in favour of Smt. Hemlata in a suit titled *"Smt. Hemlata v. Mukund Lal"* and an agreement purported to be executed by Smt. Hemlata in favour of Surender Singh Bhatia during pendency of the lis is hit by the principle of lis pendens, there was no requirement in law for the decree-holder to challenge the award or the agreement to sell. Under the circumstances, even if the Court has not allowed a decree declaring the said award and agreement having no affect upon rights of the decree-holder, it would be of no consequence nor can enure to benefit of the appellant.

13. So far as the plea that warrants of possession have been wrongly issued by the Executing Court, the appellant being transferee pendente lite is bound by the decree and deemed to be a JD in the suit in which her predecessor-in-interest was impleaded as a party. Hon"ble the Supreme Court of India in *"Babu Lal v. M/s. Hazari Lal Kishori Lal and others"* AIR 1982 SC 818, has held that in a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale of simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely, he is bound not only to execute the sale deed but also to put the property in possession of the decree-holder. This is in consonance with the provisions of Section 55(1) of the Transfer of Property Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs such possession of the property as its nature admits. It has further been held in para 16 of the judgment that it may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract of sale.

14. Reverting to the case at hand, it is none of the plea of the appellant that possession of the suit property was not with Mukund Lal at the time of commencement of the suit much less possession was with a third party or for that reason with the appellant prior to the alleged sale deed dated 12.01.2011 was executed in her favour. In this view of the matter, contention raised by counsel for the appellant in this regard is highly misplaced and liable to be rejected. It further appears to the Court that Sh. Mukund Lal erstwhile owner of the suit property along with Hemlata and others joined hands in order to save the property by hook and crook knowing fully well that Sh. Mukund Lal may be held liable to specifically perform the agreement of sale executed in the year 2001 and sought to be enforced by filing a suit in the year 2003 which was eventually decreed in the year 2012 but fortunately the first appeal and second appeal came to be decided without any loss of time as appeal by the Additional District Judge, Faridabad was decided against Mukund Lal on 22.10.2012 and the regular second appeal filed before the High Court was dismissed vide order dated 09.01.2013. I would hasten to add that Smt. Hemlata Bhatia is none else than daughter-in-law of Sh. Mukund Lal in whose favour Sh. Mukund Lal suffered a decree by way of an award passed by the Lok Adalat in

the year 2006. Despite the best efforts of Mukund Lal and his family to escape liability created under the agreement, they were caught in rigors of law due to wisdom of the legislators who have made a provision under Section 52 of the Transfer of Property Act, 1882, in order to save a litigant from unscrupulous transfers made during pendency of the suit.

15. To be fair to the appellant, it has been argued by counsel that the Executing Court was required to try and decide the objections like an independent suit, by relying upon judgment of this Court Gram Panchayat, Hassanpur case (supra). It is not incumbent upon the Executing Court to frame issues in every case irrespective of the merits of the objection petition. If such a practice is followed in every case, there may not be any end to litigation and filing of frivolous objections by different persons, in order to prolong agony of the successful decree-holder and delay the decree to reach fruition. In view of the discussion made hereinbefore, contention raised by the appellant in this regard is highly misconceived, therefore, untenable.

16. No other point has been raised.

17. For the foregoing reasons, the appeals fail and are accordingly dismissed in limine.