2024 INSC 770

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5919 OF 2023

SHINGARA SINGH .... APPELLANT

VERSUS

DALJIT SINGH & ANR ...RESPONDENTS

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. The defendant No. 2 in the suit has preferred this appeal challenging the judgment and decree passed by the High Court allowing the appeal preferred by the plaintiff/Daljit Singh to set aside the judgment and decree of the Trial Court and the First Appellate Court which concurrently decreed the suit partially

only for the alternative relief of recovery of Rs. 40,000/- along with interest while dismissing the suit in respect of specific performance of the agreement dated 17.08.1990.

2. The facts of the case emerging from the pleadings of the parties are that plaintiff/Daljit Singh instituted the suit on 24.12.1992 claiming specific performance of the agreement to sell dated 17.08.1990 in respect of the land measuring 79 Kanals 09 marlas @ of Rs. 80,000/- per acre against the payment of earnest money of Rs. 40,000/- and the balance amount of Rs. 7,54,000/- at the time of execution and registration of the sale deed on or before 30.11.1992.

3. According to the plaintiff, he remained present in the office of the Sub-Registrar on 30.11.1992 with the balance sale consideration and all the expenses for stamp papers but defendant no. 1 did not turn up to perform his part of the agreement. The plaintiff marked his presence by submitting an affidavit before the Executive Magistrate. The suit was preferred within 23 days as stipulated in the agreement. Defendant no. 1 initially denied the execution of the agreement

to sell, much less, receipt of the earnest money with further averment that the subject land was a Joint Hindu Family property. During the pendency of the suit, the present appellant/defendant no. 2/Shingrara Singh was impleaded on 25.01.1993 on the basis that defendant no. 1/ Janraj Singh executed a sale deed in his favour on 08.01.1993 in respect of the suit land on the basis of alleged agreement to sell dated 19.11.1990 for a sum of Rs. 6,45,937.50. It is to be noted that the Trial Court passed an order of *status quo* on 24.12.1992 qua alienation with regard to the share of defendant no. 1.

4. Defendant No. 2/appellant filed his separate written statement stating that defendant no. 1 has sold the property to him by executing a registered sale deed on 08.01.1993 and delivered possession after which mutation has also been carried out. According to the appellant/defendant no. 2, the agreement, basing which the suit is filed, is a fabricated ante-dated document because defendant no. 1 did not disclose the factum of this agreement while executing the sale deed in his favour and thus, the appellant/defendant no. 2 is a *bona fide* purchaser.

5. In the Trial Court plaintiff examined himself as PW-2, Deed Writer/ Kulwant Singh as PW-1, Jasjit Singh as PW-3 whereas defendants examined Kirpan Singh as DW 1, Shangara Singh as DW 2, B.M. Sehgal as DW 3 and Subhash Chander as DW 4. The Trial Court vide its judgment dated 27.04.2007 held that the plaintiff has proved the agreement to sell wherein defendant no. 2 has failed to prove that the agreement is a result of fraud and fabricated document. However, the Trial Court denied the decree for specific performance on the ground that since defendant no. 2 is the owner in possession of the suit land upon execution of the sale deed dated 08.01.1993, defendant no. 1 has left with no right or title of the suit land. Thus, he is unable to execute the sale deed in favour of the plaintiff and moreover the plaintiff and defendant no. 1 are close relative. The Trial Court also held that the plaintiff was ready and willing to perform his part of the contract. It was also held that defendant no. 2 is a *bona fide* purchaser as he was not having any knowledge about the agreement to sell between the plaintiff and defendant no. 1. The Trial Court

eventually dismissed the suit in respect of the specific performance but allowed the alternative prayer for recovery of Rs. 40,000/- with interest @ 12% per annum.

6. The First Appellate Court maintained the Trial Court's judgment and decree by holding that the subject sale agreement is a result of fraud and collusion between the plaintiff and defendant no. 1. The First Appellate Court observed that in his first written statement he denied the execution of the agreement but subsequently after amendment in the plaint and impleadment of the appellant, he admitted the claim of the plaintiff. The First Appellate Court further observed that the doctrine of *lis pendens* is not applicable in the facts of the present case.

7. The High Court, under the impugned judgment in this appeal, opined that the sale deed executed by defendant no. 1 in favour of defendant no. 2/appellant is hit by doctrine of *lis pendens* and that defendant no. 2/appellant is not a *bona fide* purchaser. The High Court noted that the suit was filed on 24.12.1992 and the next date before the Trial Court was fixed

on 12.01.1993. However, the sale deed was executed by defendant no. 1 in favour of defendant no. 2 on 08.01.1993. Both defendant no. 1 and defendant no. 2 being the residents of same village, it is unbelievable that he was not having the knowledge of the agreement, for, the sale deed in favour of defendant no. 2 was for a lesser amount than the subject agreement. The agreement was for a sale consideration of Rs. 7,94,000/- whereas the sale deed was for Rs. 6,45,937.50. It is also held that mere relationship between the plaintiff and defendant no. 1 would not be a ground to deny the discretionary relief and moreover, when both the courts below have found that the plaintiff was always ready and willing to perform his part of the contract.

8. Mr. Hrin P. Raval, learned senior counsel appearing for the appellant argued that the High Court ought not to have disturbed the concurrent judgment and order passed by the Trial Court and the Appellate Court.

On the other hand, Mr. Manoj Swarup, learned senior counsel appearing on behalf of the respondents argued that the

judgment and order passed by the Trial Court and the Appellate Court being based on perverse findings and reasoning, the High Court has rightly set aside the same for decreeing the plaintiff's suit in respect of specific performance. According to him, the High Court has rightly applied the doctrine of *lis pendens.*

9. Before proceeding to deal with the applicability of doctrine of *lis pendens,* it is significant to note that Issue no. 5 framed by the Trial Court was to the effect as to whether the agreement dated 17.08.1990 is a result of fraud and collusion, therefore, not binding on defendant no. 1. This issue was decided against the defendant. When the plaintiff preferred first appeal, the defendant did not move any cross-appeal or cross-objections, yet the first Appellate Court entered into this aspect of the matter to hold that the subject agreement was collusive between the plaintiff and defendant no. 1. This is not permissible in view of the law laid down by this Court in **Banarsi vs. Ram Phal**[1] wherein this Court held thus in paras 10 & 11:

[1] (2003) 9 SCC 606

"10. The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a *finding*. The difference which has resulted we will shortly state. A respondent may *defend* himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to *attack* any part of the decree, he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(*i*) The impugned decree is *partly* in favour of the appellant and *partly* in favour of the respondent.

(*ii*) The decree is *entirely* in favour of the respondent though an *issue* has been decided against the respondent.

(*iii*) The decree is *entirely* in favour of the respondent and all the *issues* have also been answered in favour of the respondent but there is a *finding* in the judgment which goes against the respondent.

11. In the type of case (*i*) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-

> amendment too. In the type of cases (*ii*) and (*iii*) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any *finding* adverse to him as the decree is *entirely* in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a *finding* recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any *finding* by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any *finding* recorded against the respondent."

10. In the case at hand, the Trial Court had partly decreed the suit to the extent of recovery of Rs. 40,000/-. This part of the decree was not challenged by the defendants either by filing a separate appeal or by way of cross objections. They did not prefer any cross objection challenging the finding on issue no.

5. In this situation the defendants have conceded to the decree for refund and finding on issue no. 5. Therefore, in absence of cross-appeal or cross-objections by the defendants, the First Appellate Court could not have recorded a finding that the subject agreement was a result of collusion between the plaintiff and defendant no. 1.

11. In **Usha Sinha vs. Dina Ram**[2] this Court held that the doctrine of *lis pendens* applies to an alienation during the pendency of the suit whether such alienees had or had no notice of the pending proceedings. The following has been held I paras 18 & 23:

> "**18**. Before one-and-half century, in *Bellamy* v. *Sabine* [(1857) 1 De G & J 566 : 44 ER 842] , Lord Cranworth, L.C. proclaimed that where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end.

[2] (2008) 7 SCC 144

> **23**. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent court. The doctrine of "lis pendens" prohibits a party from dealing with the property which is the subject-matter of suit. "Lis pendens" itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment-debtor, he cannot seek benefit of Rules 98 or 100 of Order 21."

12. This Court in **Sanjay Verma vs. Manik Roy**[3] was dealing with a suit for specific performance. During pendency of the suit, a temporary injunction was granted in favour of the plaintiff and different portions of the suit land were sold whereafter the purchasers applied for impleadment, which was rejected by the Trial Court but allowed by the High Court against which special leave to appeal was filed. In the above background, this Court observed the following in para 12:

> **"12.** The principles specified in Section 52 of the TP Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be

[3] (2006) 13 SCC 608

> 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. The principle of lis pendens embodied in Section 52 of the TP Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court."

13. **Guruswamy Nadar vs. P. Lakshmi Ammal**[4] also arose out of a suit for specific performance of agreement wherein this Court considered the effect of subsequent sale of properties by owner (proposed vendor) in favour of a third party. In the above facts, this Court held thus in paras 9 & 15:

> **"9.** Section 19 of the Specific Relief Act clearly says subsequent sale can be enforced for good and sufficient reason but in the present case, there is no difficulty because the suit was filed on 3-5-1975 for specific performance of the

[4] (2008) 5 SCC 796

> agreement and the second sale took place on 5-5-1975. Therefore, it is the admitted position that the second sale was definitely after the filing of the suit in question. Had that not been the position then we would have evaluated the effect of Section 19 of the Specific Relief Act read with Section 52 of the Transfer of Property Act. But in the present case it is more than apparent that the suit was filed before the second sale of the property. Therefore, the principle of lis pendens will govern the present case and the second sale cannot have the overriding effect on the first sale.
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> **15.** So far as the present case is concerned, it is apparent that the appellant who is a subsequent purchaser of the same property, has purchased in good faith but the principle of lis pendens will certainly be applicable to the present case notwithstanding the fact that under Section 19(*b*) of the Specific Relief Act his rights could be protected."

14. In a recent judgment of this Court in **Chander Bhan (D) through Lr. Sher Singh vs. Mukhtiar Singh & Ors.**[5] it is observed, "once it has been held that the transactions executed by the respondents are illegal due to the doctrine of *lis pendens* the defence of the respondents 1 – 2 that they are *bona fide* purchasers for valuable consideration and thus, entitled to

[5] 204 INSC 377

protection under Section 41 of the Transfer of Property Act, 1882 is liable to be rejected."

15. In the case in hand also, it is an admitted position that the suit was filed on 24.12.1992 and the sale deed was executed on 08.01.1993 by defendant no. 1 in favour of defendant no. 2/appellant during pendency of the suit. The doctrine of *lis pendens* as contained in Section 52 of the Transfer of Property Act, 1882 applies to a transaction during pendency of the suit. The Trial Court found execution of agreement to be proved and directed for refund of the amount of Rs. 40,000/- by defendant no. 1 to the plaintiff/appellant with further finding on issue no. 5 that the agreement was not a result of fraud and collusion. The defendant did not prefer any cross-appeal or cross-objections against the said partial decree and allowed the finding to become final. The plaintiff was non-suited only on the ground that defendant no. 2 had no notice of the agreement and is a *bona fide* purchaser. However, once sale agreement is proved and the subsequent sale was during pendency of the suit hit by the doctrine of *lis pendens*, the High Court was fully

justified in setting aside the judgment and decree of the Trial Court and the First Appellate Court and passing a decree for specific performance.

16. In our considered view, the High Court has not committed any error of law in rendering the judgment impugned which is hereby affirmed and the instant appeal deserves to be and is hereby dismissed. No order as to costs.

.....J.
(HRISHIKESH ROY)

..... J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
OCTOBER 14, 2024