

SATYA NARAIN (SINCE DECEASED) THROUGH HIS LRS.v. SMT. ROSHANI,(2022-1)205 PLR 380

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

SATYA NARAIN (SINCE DECEASED) THROUGH HIS LRS. – Appellant,

versus

SMT. ROSHANI and others – Respondents.

RSA Nos. 1003 and 1004, 2021 (O&M)

(i) Agreement to Sell - Clause 3 of the agreement to sell provided that if Seller does not execute the sale deed on the specified date, then he shall pay double of the amount of the earnest money to the buyer, failing which she will be entitled to file a suit for specific performance of the agreement to sell - Admittedly, seller did not pay the amount as agreed - Therefore, second part of clause 3 became enforceable - Decree of specific performance of the agreement to sell alongwith the consequential relief of permanent injunction - upheld - Suit for Specific performance. [Para 7]

(ii) Agreement to Sell - Transaction during the pendency of the suit is not illegal or void ab initio but only voidable at the option of the decree holder - As per the principle of lis pendens, a subsequent transaction, relating to the subject matter of the suit, during the pendency of the suit, becomes subservient to the rights of the parties as determined by the Court - The appellant derive their right from the alleged mortgage deed which was entered into during the pendency of the suit - Becomes subservient to the rights of the parties as determined by the court - Aforesaid mortgage deed has not been declared as illegal or void.

Cases referred to:-

1. AIR 2019 SC 4252 (SC), *Madhukar Nivrutti Jagtap v. Smt. Pramila Bai Chandulal Parandekar*.

Mr.Chanderhas Yadav, for the appellants

Anil Kshetarpal, J (Oral) - (26th October, 2021) - The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

2. By this order two Regular Second Appeals i.e RSA-1003- 2021 and RSA-1004-2021 shall stand disposed of.

3. Both the appeals have been filed against the common judgment passed by the learned First Appellate Court. The successor in interest of late Sh. Satya Narain (defendant no.5) assails the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for passing a decree of specific performance of the agreement to sell alongwith the consequential relief of permanent injunction. Late Sh. Satya Narain claimed to be a mortgagee of the suit land pursuant to a mortgage deed dated 27.10.2014.

4. The plaintiff (respondent)-Roshni wife of Vikram Singh filed a suit on 12.07.2013 seeking specific performance of the agreement to sell dated 10.12.2012 executed by Late Sh. Mahabir s/o Preet singh (predecessor in interest of respondent no.2 to 5) in her favour. Respondent no.2 to 5 contested the suit with the assertion that there was no agreement to sell. Respondent no.2 Smt. Kanta (widow of Mahabir) also asserted that she had mortgaged the suit property in favour of Late Sh. Satya Narain on 22.10.2014. Both the courts, after examining the evidence, have found that the agreement to sell was executed by Late Sh. Mahabir in favour of Smt. Roshini on receipt of Rs.10,67,000/- out of the total sale consideration of Rs.12,15,000/-. The plaintiff (Smt. Roshni), in order to prove her case examined both the attesting witnesses of the agreement to sell as well as the scribe.

5. Both the courts have also found that the alleged mortgage in favour of the predecessor in interest of the appellants is governed by the rule of lis pendens.

6. Learned counsel representing the appellant while drawing the attention of the Court to clause 3 of the agreement to sell dated 10.12.2012 contends that the real intention of the parties was to pay back double the amount of the earnest money on defendant's failure to execute a sale deed. He further contends that the defendants have created a charge on the property and therefore, the defendants had no right to alienate the property.

7. This Court has carefully read clause 3 of the agreement to sell dated 10.12.2012. It has been provided that if Mahabir does not execute the sale deed on 10.12.2013 then he shall pay double of the amount of the earnest money to Smt. Roshni failing which she will be entitled to file a suit for specific performance of the agreement to sell. Admittedly, Sh. Mahabir did not pay the amount as agreed. Therefore, second part of clause 3 became enforceable. Hence, clause 3 does not help the case of the appellants. The next argument of the learned counsel representing the appellant is with regard to creation of charge. He relies upon the judgment passed by the Hon'ble Supreme Court in *Madhukar Nivrutti Jagtap and others v. Smt. Pramila Bai Chandulal Parandekar and others* ¹ AIR 2019 SC 4252 (SC). This Court has carefully read the judgment. It has been held by the Hon'ble Supreme Court that a transaction during the pendency of the suit is not illegal or void ab initio but only voidable at the option of the decree holder. As per the principle of lis pendens, a subsequent transaction, relating to the subject matter of the suit, during the pendency of the suit, becomes subservient to the rights of the parties as determined by the court. Therefore, the aforesaid judgment also does not help the learned counsel for the appellants. The appellants derive their right from the alleged mortgage deed dated 22.10.2014, which was entered into during the pendency of the suit. The suit was filed on 12.07.2013. Learned counsel representing the appellants admits that the aforesaid

mortgage deed has not been declared as illegal or void.

8. Keeping in view the aforesaid facts, no ground to interfere with the concurrent findings of fact arrived at by the courts below is made out. Hence, dismissed. All the pending miscellaneous applications, if any, are also disposed of.

R.M.S.

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Petition disposed of.