

Har NaraIn (Dead) by Lrs. Vs. Mam Chand (Dead) by Lrs. and ors.

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Court : Supreme Court of India

Decided On : Oct-08-2010

Judge : P. SATHASIVAM; Dr. B.S. CHAUHAN, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 41 Rule 19, Section 17, 151; [Transfer of Property Act, 1882](#) - Section 3, 52; [Specific Relief Act, 1963](#) - Section 19(b)

Appeal No. : CIVIL APPEAL NOS.995-996 OF 2003

Appellant : Har NaraIn (Dead) by Lrs.

Respondent : Mam Chand (Dead) by Lrs. and ors.

Judgement :

1. These appeals have been preferred against the judgments and orders dated 9.10.2001 and 9.9.2002 passed by the High Court of Punjab & Haryana High Court at Chandigarh in R.S.A. No.1545 of 1979 dismissing the Regular Second Appeal, as well as the Review Application, filed by the appellant concurring with the judgments and orders of the trial Court as well as of the First Appellate Court on all issues raised in the case.

2. Facts and circumstances giving rise to these appeals are that the defendant/respondent No.1-Mam Chand (since deceased through LRs.) (hereinafter called the 'respondent') was the owner of land admeasuring 22 kanals situate within the Revenue estate of Village Asraka Majra, District Rewari, Haryana. The said respondent had mortgaged the entire land in favour of the predecessor-in-interest of the appellant, namely, Har Narain (since deceased and now represented through his LRs.) for Rs.7,000/-. The appellant was also put in possession of the said land. The respondent No.1 entered into an Agreement for Sale of 8 kanals of the said property with the appellant for Rs.7500/- and he received Rs.200/- as earnest money in cash while a sum of Rs.7000/- to be adjusted as mortgage amount. However, the said respondent No.1 executed the sale deed on 2.8.1971 in favour of respondent nos.2 to 6.

3. Being aggrieved, the appellant filed Suit No.172 of 1971, for specific performance against the respondent no.1 for executing the sale deed of the land in question on 10.8.1971 and the trial Court restrained him from alienating the suit property by any means. Respondent no.1 moved an application dated 16.8.1971 for vacating/modifying the interim order dated 10.8.1971 wherein he disclosed that the entire land in dispute had already been alienated in favour of respondent nos.2 to 6. However, the sale deed executed in favour of the said respondents was registered on 3.9.1971. The suit was contested by the respondents on various grounds, however, the trial Court dismissed the suit vide judgment and decree dated 4.9.1973 on various grounds, inter alia, that sale deed deemed to have come into force on 2.8.1971, as the registration thereof dated 3.9.1971 would relate back to the date of execution which had been prior to institution of the suit and thus, the doctrine of lis pendens would not apply. The said respondents 2 to 6 were bona fide purchasers for consideration without notice. Therefore, the sale deed in their favour was to be protected.

4. Being aggrieved, the appellant filed First Appeal No.508 of 1973, however, the same was dismissed by the First Appellate Court vide judgment and decree dated 22.3.1979. The appellant further approached the High

Court by filing the Regular Second Appeal No.1545 of 1979 which was dismissed by the High Court vide judgment and order dated 9.10.2001. However, as none had appeared on behalf of the appellant on the said date before the High Court, the appellant filed the application to recall the said judgment and order dated 9.10.2001 under Order 41 Rule 19 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC'). The said application was allowed vide order dated 9.9.2002 and the matter was heard afresh on merit on the same day. The Court agreed with the proposition laid down by the courts below that principles of lis pendens would not apply in the facts and circumstances of this case as the sale deed has been executed before the filing of the suit though, the same was got registered subsequent to the institution of the suit. Hence, these appeals.

5. Shri Dhruv Mehta, learned Senior counsel appearing for the appellant has submitted that the courts below reached the conclusion that doctrine of lis pendens was not applicable in the facts of the case merely on the ground that the sale deed has been executed by the respondent No.1 in favour of respondent nos.2 to 6 prior to institution of the suit and the registration of the sale deed would relate back to the date of execution by virtue of the application of the provisions of Section 47 of the Registration Act, 1908 (herein after called the 'Act 1908') without taking note of the fact that the execution of a sale deed of immovable property of more than Rs.100/- in value is not capable to transfer the title unless the deed is registered as required under Section 52 of the [Transfer of Property Act, 1882](#) (hereinafter called the 'Act, 1882) and Section 17 of the 'Act 1908. In case, the appellant had been in the possession of the suit land being the mortgagee of the entire property since long, the question of protection under Section 19(b) of the [Specific Relief Act, 1963](#) (hereinafter called the 'Act 1963') to the respondent nos.2 to 6 that they were bonafide purchasers for value and paid money in good faith without notice of the earlier contract, becomes meaningless for the reason that they had a notice that the land was in possession of the appellant and this fact had also been mentioned by the respondent No.1 in the sale deed dated 2.8.1971 in their favour. Thus, the appeals deserve to be allowed.

6. On the contrary, Shri R.K. Kapoor, learned counsel appearing for the respondents has vehemently opposed the appeals contending that there are concurrent findings of fact by three courts and this Court being the fourth court should not re-appreciate the factual matrix of the case and interfere in the appeals. The sale deed might have been registered at a later stage but the document becomes effective from the date of its execution. The findings so recorded by the courts below do not require any interference. The appeals lack merit and are liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the records. Admitted facts remain that the entire land admeasuring 22 kanals had been mortgaged by Mam Chand, respondent No.1 in favour of appellant vide deed dated 30.6.1970 and the appellant had been put in possession thereof. The possession of the land is with the appellant since 1970. An agreement to sell was entered into between the appellant and respondent No.1 on 25.5.1971. Sale deed was executed by the respondent No.1 in favour of respondent nos.2 to 6 on 2.8.1971 and the said sale deed was got registered on 3.9.1971. The suit had been filed on 10.8.1971 i.e. subsequent to the date of execution of the sale deed and before the registration thereof on 3.9.1971. The trial court also passed an ex-parte order dated 10.8.1971 restraining the respondent No.1 from alienating the suit land, however it was subsequently modified vide order dated 31.8.1971.

The basic questions arise as to whether in the fact- situation of this case, the sale deed executed by the respondent No.1 in favour of respondent nos.2 to 6 could be subject to the doctrine of lis pendens and in case the appellant had been in possession of the suit land being mortgagee since 1970, the respondent nos.2 to 6 can be held to be vendees without notice of an agreement to sell in favour of the appellant by the respondent no.1.

8. All the courts below have proceeded on the presumption that as the registration of a document relates back to the date of execution and in the instant case though the registration was subsequent to institution of the suit, it would relate back to the execution of the deed and the doctrine of lis pendens would not apply.

Further, without considering the fact that the appellant had been in possession of the suit land since 1970, though, this fact had been mentioned in the sale deed in favour of respondent nos.2 to 6 by the respondent No.1 whether it could be held that they were not put to notice of the fact that the appellant had some interest in the property and whether in such fact- situation the respondent nos.2 to 6 may be entitled for benefit of the provisions of Section 19 of the Act, 1963.

9. Section 54 of the Act, 1882, mandatorily requires that the sale of any immovable property of the value of hundred rupees and upward can be made only by a registered instrument. Section 47 of the Act, 1908, provides that registration of the document shall relate back to the date of the execution of the document. Thus, the aforesaid two provisions make it crystal clear that sale deed in question requires registration. Even if registration had been done subsequent to the filing of Suit, it related back to the date of execution of the sale deed, which was prior to institution of the Suit. A similar issue though in a case of right of pre-emption was considered by the Constitution Bench of this Court in *Ram Saran Lall & Ors. v. Mst. Domini Kuer & Ors.*, AIR 1961 SC 1747, by the majority of 3:2, the Court came to the conclusion that as the mere execution of the sale deed could not make the same effective and registration thereof was necessary, it was of no consequence unless the registration was made. Thus, in spite of the fact that the Act, 1908, could relate back to the date of execution in view of provisions of Section 47 of the Act, 1908, the sale could not be given effect to prior to registration. However, as the sale was not complete until the registration of instrument of sale is complete, it was not completed prior to the date of its registration. The court held:

"Section 47 of the Registration Act does not, however, say when sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore, nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore, we do not think that the sale in this case can be said, in view of Section 47 to have been completed on January 31, 1946." (Emphasis added).

10. This view has subsequently been followed and approved by this Court as is evident from the judgments in *Hiralal Agrawal Etc. v. Rampadarath Singh & Ors. Etc.*, AIR 1969 SC 244; *S.K. Mohammad Rafiq (Dead) by LRs. V. Khalilul Rehmad & Anr. Etc.*, AIR 1972 SC 2162; *Thakur Kishan Singh (Dead) v. Arvind Kumar*, AIR 1995 SC 73; and *Chandrika Singh (Dead) by LRs. V. Arvind Kumar Singh (Dead) by LRs. & Ors.*, AIR 2006 SCC 2199.

11. However, all these cases are related to right to pre-emption though the legal issue involved therein remained the same. In view of the above, we are of the considered opinion that in spite of the fact that the registration of the sale deed would relate back to the date of execution, the sale can not be termed as complete until its registration and it becomes effective only once it stands registered. Thus, the fiction created by Section 47 of the Act, 1908, does not come into play before the actual registration of the document takes place.

12. In *Guruswamy Nadar v. P. Lakshmi Ammal (Dead) Through LRs. & Ors.*, (2008) 5 SCC 796, this Court dealt with a similar issue and considered the effect of doctrine of *lis pendens* and the provisions of Section 19(b) of the Act, 1963. Facts of the said case had been that an agreement to sell stood executed between the first purchaser and owner of the land on 4th July, 1974 for a sum of Rs.30,000/- and a sum of Rs.5,000/- was given as advance. The remaining amount was to be paid before 31st July, 1974. As the said amount was not paid, the owner again sold the suit property to another party (appellant) on 5th May, 1975 for a sum of Rs.45,000/- and possession of the suit property was handed over to the appellant therein. Thus, the first purchaser filed the suit for enforcement of the specific performance of the contract. The trial court dismissed the Suit holding that the agreement was genuine and appellant was a bona fide purchaser for value paid in good faith,

without notice of the earlier agreement, therefore, no decree for specific performance could be passed in favour of the plaintiff therein. The First Appellate Court reversed the said judgment and decree. The Second Appeal was dismissed by the High Court. This Court considered the provisions of Section 52 of the Act, 1882, and Section 19 (b) of the Act, 1963, and held that as the subsequent sale was subsequent to the filing of the Suit, Section 19(b) of the Act 1963 read with Section 52 of the Act, 1882, could not grant any benefit to the subsequent purchaser and the subsequent sale was subject to the doctrine of lis pendens. Second sale could not have the overriding effect on the first sale. The Court held as under: "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 right could be protected."

13. In view of the above, it is evident that doctrine of lis pendens would apply in the present case as the registration of the sale deed was subsequent to filing of the Suit and subsequent purchasers i.e. respondent Nos. 2 to 6 cannot claim benefit of the provisions of Section 19(b) of the Act, 1963.

14. So far as the issue of notice of first sale to respondent Nos. 2 to 6 is concerned, it has to be examined bearing in mind that the sale deed in favour of the respondent Nos. 2 to 6 clearly disclosed that the Suit land had been mortgaged to the appellant and it was in his possession since 1970. In R.K. Mohammed Ubaidullah & Ors. v. Hajee C. Abdul Wahab (Dead) by LRs. & Ors., AIR 2001 SC 1658, this Court considered a similar case wherein the question had arisen as to whether the vendees of subsequent sale were bona fide purchasers of the suit property in good faith for value without notice of original contract and whether they were not required to make any inquiry as to the equitable or further interest of the other party at the time of execution of sale in their favour. In view of the fact that they had been aware that the land was in possession of first purchaser, the Court took note of the definition of "notice" as provided in Section 3 of the Act, 1882, and particularly Explanation II thereof for deciding the case. The said Explanation reads:

"Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of title, if any, of any person who is for the time being in actual possession thereof."

This Court came to the conclusion that in view of Section 19(b) of the Act, 1963 and definition of "notice" contained under Section 3 of the Act, 1882, it could not be held that the subsequent purchasers were bona fide purchasers in good faith for value without notice of the original contract and they were required to make inquiry as to the nature of the possession or title or further interest, if any, of the other party over the suit property at the time when they entered into sale transaction, notwithstanding, that they were already aware that the other party was in possession of the suit property as the tenant. Thus, what is material is the inquiry at the time when subsequent sale transaction was entered into.

15. The instant case is squarely covered by the aforesaid judgment, so far as this issue is concerned. The subsequent purchaser has to be aware before he purchases the suit property. Thus, we are of the considered opinion that respondent Nos. 2 to 6 could not be held to be bona fide purchasers for value paid in good

faith without notice of the original contract and the sale in their favour was subject to the doctrine of lis pendens. Legal maxim, pendente lite, nihil innovetur; provides that as to the rights of the parties to the litigation, "the conveyance is treated as if it never had any existence; and it does not vary them."

16. It has half-heartedly been argued by Shri Kapoor, learned counsel for the respondents that respondent Nos. 2 to 6 are the first purchasers as there was an agreement to sell executed in their favour on 19.2.1971 and he had taken us through the judgments of the trial court as well as the First Appellate Court where passing remarks have been made by the courts in respect of the same on the basis of the written statement filed by the respondent No.1, though this point has not been agitated by the respondent Nos. 2 to 6, nor any issue had been framed in this respect either by the trial court or as an additional issue by the First Appellate Court. In view of the fact that the respondent No.1 has been executing documents in respect of the same land in favour of different persons as is evident from the record, the contention raised by Shri Kapoor is not worth

consideration.

17. In view of the above, we reach the inescapable conclusion that the sale executed by respondent No.1 in favour of respondent Nos. 2 to 6 on 2.8.1971 could not be termed as a complete sale until the document got registered on 3.9.1971. In view of the provisions of Section 47 of the Act, 1908 the effect of registration would be that registration would relate back to the date of execution but it does not mean that sale would be complete in favour of respondent Nos. 2 to 6 prior to 3.9.1971 i.e. the date of registration of the sale deed. In view of the above, as sale stood completed during the pendency of the suit, doctrine of lis pendens is applicable in the facts and circumstances of the case. The courts below failed to appreciate that the fiction created by Section 47 of the Act 1908, itself is a consequence of registration of the sale deed. More so, as the appellant had been in possession of the suit land being a mortgagee since 1970 and this fact had also been mentioned by the respondent No.1 in the sale deed dated 2.8.1971 in favour of respondent Nos. 2 to 6, the question of respondent Nos. 2 to 6 being bonafide purchasers for value and paid money in good faith without notice does not arise, simply for the reason that the said respondents were fully aware that the suit land was in possession of the appellant. Thus, the respondents No.2 to 6 cannot take the benefit of the provisions of Section 19(b) of the Act, 1963.

18. In view of the above, the appeals succeed and are allowed. The judgment and decree of the courts below are set aside. The respondents are directed to execute the sale deed in favour of the appellant to the extent of land, for which the agreement to sell was executed within a period of three months from today. However, in order to meet the ends of justice it is necessary to hold that respondent Nos. 2 to 6 shall be entitled to receive the amount paid by them to the respondent No.1 as consideration along with 10% interest per annum on the same. The respondent No.1 shall be entitled to redeem the land over and above the extent of land in respect of which the agreement to sell had been executed, if any, in accordance with law. There shall be no order as to costs.

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