
(2015) 10 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : ESA Nos. 47, 49 and 50 of 2013 (OandM)

Prem Lata and Others

APPELLANT

Vs

Jagdish Kumar and Others

RESPONDENT

Date of Decision : 20-10-2015

Acts Referred:

Registration Act, 1908 — Section 17, 17(1)(b)

Citation : (2015) 10 P&H CK 0009

Hon'ble Judges : Raj Mohan Singh, J.

Bench : Single Bench

Advocate : S.K. Garg Narwana, Senior Advocate, Deepak Hooda and Karan Garg, Advocates, for the Appellant; O.P. Goel Advocate and Randeep Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Raj Mohan Singh, J.—By this common judgment ESA Nos. 47, 49 and 50 of 2013 are being disposed of. For convenience facts are being taken from ESA No. 47 of 2013 titled as Smt. Prem Lata v. Jagdish Kumar and others.

2. Brief facts culminating in filing the aforesaid appeals are that on 08.10.1973 a civil suit was filed by Madan Lal S/o. Mukh Ram for possession by way of partition, claiming 1/4th share in the plot measuring 31000 square yards in Janta Colony, Rohtak. Shares of different defendants were earmarked and ultimately suit was decreed. Local Commissioner appointed in that behalf ultimately partitioned the land by preparing site plan and khatauni and all the contestants were satisfied.

3. As per khatauni, plot Nos. 2, 32, 33 and 44 came to the fold of Madan Lal with specific dimensions and area. Different plots with reference to plot number dimensions and area are tabulated as under:--

In this way, in the aforesaid partition Madan Lal got total area of 6547 square yards in the aforesaid four plots.

4. Chhotu Ram, Madan Lal, Mansa Ram, Maman Chand were the sons of Mukh Ram. Sher Singh and Rajinder were sons of Badri Parsad S/o. Mukh Ram and Sushila was widow of Satnarain. The aforesaid persons in order to resolve their differences vis-à-vis properties at Bhiwani appointed Mahabir Singh and Krishan Chand as their Panches for conducting partition between them. Following properties were subject matter of agreement/compromise:--

(1) Old House: This house is bounded as under:--

(2) Machine Wala House: This House is bounded as under:--

(3) New House No. 98: This house is bounded as under:--

(4) Dilapidated House: This house is bounded as under:--

(5) Latest constructed new house: This house is bounded as under:--

(6) One shop: This shop is bounded as under:--

5. Following entitlements of the parties were earmarked:--

"(1) Chhotu Ram: His is given 1/2 share in House No. 98, mentioned at S. No. 3 and 1/2 share in shop mentioned at S. No. 6. Chhotu Ram is also being given 1/3rd share in Baarake field, which will be Mandal Wali.

(2) Madan Lal: He is given the entire new house mentioned at S. No. 5 and 1/2 share in New House No. 98 mentioned at S. No. 3.

(3) Mansa Ram: Mansa Ram is being given above said machine Wala house mentioned at S. No. 2 and 1/2 share in shop mentioned at S. No. 6.

(4) Maman Chand: The dilapidated house mentioned at S. No. 4 is being given to Maman Chand.

(5) Indrawati @ Marwan: Indrawati alias Marban wd/o Late Badri Parshad is given old house mentioned at S. No. 1."

6. Besides the aforesaid entitlement, Madan Lal was also obligated to execute sale deed of 240 Sq. yards of land situated in Rohtak. Condition No. 1 in the present context is reproduced as under:--

"1. The sale deed of 240 sq. yards land out of the total land which is situated in Rohtak, will have to be got registered by Madan Lal Ji (titled holder of the said land) in favour of Sh. Chhotu Ram S/o. Mukh Ram. Chhotu Ram shall have to bear the expenses of registration."

Partition was mutually decided by way of aforesaid compromise which was executed on 13.04.1985 and the Arbitrator signed the same.

7. Chhotu Lal executed Will dated 29.05.1982 in favour of Jagdish Kumar S/o. Madan Lal. The aforesaid sale deed in favour of Chhotu Ram was required to be executed from total area of 6547 sq. yards of land in Rohtak which came to the

share of Madan Lal in a decree for partition in the year 1973. Out of total land, Madan Lal executed sale deed No. 3241 dated 18.08.1986 in favour of appellant Prem Lata in respect of 79 sq. yards of land with defined dimensions. After the aforesaid purchase, the appellant constructed her house in this plot in the year 1987 which is depicted by photograph on record as Annexure A-6.

8. The land measuring 240 sq. yards which was to be given to Chhotu Ram by way of sale deed was to be effected from 6547 sq. yards of land held by Madan Lal in the award/agreement of Arbitrator, the configuration/dimensions of the area of 240 sq. yards have not been mentioned as to in which portion of the land the said area was to be earmarked, nor any dimensions were shown vis-?-vis placement of this chunk of land with reference to the properties owned by different persons.

9. On 24.04.1986, an application was moved to make the award as rule of the Court. At that time Jagdish Kumar now decree-holder filed objections to the award dated 10.08.1987 taking ground of non-executability of the award. The petition shows that Jagdish Kumar was not satisfied upto 10.08.1987 with the award in question.

10. The award was made rule of the Court on 30.09.1988 by order of the Sub Judge Ist Class, Bhiwani. Thereafter Jagdish Kumar filed execution of the decree on 26.11.1994 against LR of Madan Lal and not against the appellant who had purchased 79 sq. yards of the area vide sale deed dated 18.08.1986. Similarly Sumitra Jain and Chander Kala also purchased 79 sq. yards of land vide sale deed of even date from Madan Lal and had also constructed their respective houses on the area so purchased by them. Execution was not filed against the aforesaid purchasers. Appeal against the order making the award rule of the Court was also dismissed.

11. As per the award, 240 sq. yards of land in Rohtak was agreed to be transferred by way of registered sale deed in favour of Chhotu Ram by Madan Lal by virtue of Will. After the demise of Chhotu Ram in the year 1996, Jagdish Kumar became successor in interest of Chhotu Ram and he claimed his entitlement on the basis of aforesaid award wherein Madan Lal was to execute the sale deed in favour of Chhotu Ram. Thereafter sale deed was executed and a copy was placed on record on 05.12.2006.

12. In execution, warrants of possession were issued after getting the construction of the appellant demolished. On acquiring knowledge about pendency of execution, appellant filed objections before the executing Court on the ground of bona fide purchaser.

13. The executing Court proceeded to frame issues. Respondent No. 1 filed Civil Revision No. 3884 of 2008 before this Court and the same was allowed on 24.12.2009. The order passed by executing Court dated 30.05.2008 was set aside. Against the order dated 24.12.2009 passed by this Court, the appellant filed CA No. 5777 of 2011 before the Hon''ble Supreme Court. The Hon''ble

Supreme Court vide order dated 18.07.2011 set aside the order dated 24.12.2009 passed by this Court and restored the order dated 30.05.2008 passed by the executing Court and directed the executing Court to decide the objections by way of following proper procedure. In the objections filed by the appellant necessary details were given from the date on which property was purchased by the objector and factum of construction on the site and no notice was ever issued to decree-holder by the Court to the objector.

14. The executing Court vide order dated 05.08.2013 dismissed the objections filed by the appellant. The objections were filed on 08.02.2008. These objections were once decided vide order dated 21.08.2010 and warrant of possession regarding land in question were issued. Against the order dated 21.08.2010, appeal was filed by all the purchasers of 79 sq. yards of land before the Additional District Judge on 08.09.2010. During the interregnum period order of the Hon'ble Supreme Court came and the pending appeal was consigned to record and in view of the earlier order of the executing Court, proper procedure was adhered to and thereafter executing Court passed the order dated 05.08.2013 dismissing the objections.

15. The appellant(s) filed appeal before the Additional District Judge, Rohtak which was also dismissed on 22.08.2013 and in this way the present Execution Second Appeals came to be filed in this Court.

16. Learned counsel for the appellant contends that area 240 sq. yards which was agreed to be transferred in favour of Chhotu Ram by Madan Lal remained undefined area for want of proper dimensions. Since the aforesaid area was to be transferred out of total area of 6547 sq. yards owned by Madan Lal by virtue of civil Court decree dated 09.01.1974, therefore, this area was required to be properly defined. According to learned counsel even the decree after making the award rule of the Court is conspicuously silent about dimensions of the area so sold to Chhotu Ram predecessor of the decree-holder. The nature of decree being without description of the land is not executable in nature. Perusal of the award as well as decree do not bring out any description of the land vis-?-vis 240 sq. yards, the subject matter of sale deed in favour of Chhotu Ram.

17. Learned counsel for the appellant argued that the appellant had purchased 79 sq. yards of land from Madan Lal by way of registered sale deed with specific description of the land in the sale deed having dimensions vis-?-vis the property situated around the land in question. The award dated 13.04.1985 was never registered. The house constructed by the appellant is the only house owned by her. Chhotu Ram died before moving any application for making the award rule of the Court and the condition was never complied with. Learned counsel further argued that since Madan Lal was the owner of 6547 sq. yards of land by virtue of civil Court decree dated 09.01.1974, thereafter, even if the area of 240 sq. yards was to be excluded, he was still owner of remaining area of land and, therefore, the sale in favour of the appellant is fully protected as the appellant also stepped into the shoes of Madan Lal in the capacity of co-sharer. Since there is no defined

dimensions of the area measuring 240 sq. yards, whereas the area so purchased by the appellant has specific dimensions, therefore, the area to the extent of 240 sq. yards cannot be enforced at the cost of the area purchased by the appellant as both the decree-holders and the appellant would be in the capacity of co-sharers inter se.

18. Learned counsel highlighted the legal position in the context of unregistered award made rule of the Court. The award was executed at Bhiwani, mostly in respect of properties at Bhiwani whereas the only property in Rohtak was made subject matter of this sale deed. The appellant(s) are residents of Rohtak. Even the award was made rule of the Court at Bhiwani. The question of notice of pending litigation on the first principle has to be proved with reference to evidence for which the executing Court has examined witnesses. One more proposition also evolves from the facts of this case whether with the purchase of 79 sq. yards of land in the year 1986 out of total holdings of Madan Lal the subsequent registration of sale deed in respect of 200 sq. yards of land based on rule of the Court was made on the basis of unregistered award would involve in its ambit the land so purchased by the appellant under doctrine of lis pendens?

19. The aforesaid proposition has to be answered even in view of the fact that whether sufficient material exist on record to show that Madan Lal was not having any land except the land measuring 240 sq. yards as on date when sale deed dated 18.08.1986 in respect of 79 sq. yards of land was executed in favour of appellant. The executing Court adopted procedure of framing issue while deciding the objections.

20. Perusal of the record reveals that no evidence has forthcome on the issue whether Madan Lal was having 240 sq. yards of land to his credit as on 18.08.1986. Secondly this issue has to be answered in the context of unregistered award made rule of the Court by the civil Court whether would nullify the existence of civil Court decree by virtue of subsequent sale deed executed by Madan Lal in terms of condition of the award?

In the absence of any material on record to suggest that only surviving land available with Madan Lal was only to the extent of 240 sq. yards and secondly even if that land was available with Madan Lal, the sale deed dated 18.08.1986 in itself is protected in view of unregistered award made rule of the Court by the civil Court.

21. Apparently Madan Lal got 6547 sq. yards of land by virtue of civil Court decree dated 09.01.1974 and all other brothers of Madan Lal had no right or interest in the said land. Madan Lal acquired the aforesaid land free from all encumbrances of his joint family. The aforesaid land is situated in Rohtak. Arbitral award was passed in respect of land and property at Bhiwani after distributing the properties at Bhiwani amongst the brothers. A condition was imposed that 240 sq. yards of land at Rohtak would be given to Chhotu Ram by way of sale deed. Chhotu Ram had executed Will dated 29.05.1982 in favour of

Jagdish Kumar S/o. Madan Lal and after the death of Chhotu Ram he became deemed owner of property which was likely to be transferred in favour of Chhotu Ram who died on 03.12.1985 before making of award rule of the Court. In the meanwhile Madan Lal also died on 20.04.1990, so Legal representatives of Madan Lal executed the sale deed in favour of Jagdish Kumar as per condition of arbitral award on 28.11.2006.

22. Now question arises whether purported award created right in immovable property worth more than Rs. 100/- requires registration in terms of Section 17(1)(b) of Registration Act or not?

In Satish Kumar and Others Vs. Surinder Kumar and Others, the Hon''ble Apex Court held that registration of award before making it rule of the Court is necessary. The view taken by Full Bench of this Court in Sardool Singh Vs. Hari Singh and Others, was considered in Satish Kumar and others'' case (supra) and registration of such award was held compulsory in Lachhman Dass Vs. Ram Lal and Another, the view of Satish Kumar and others'' case (supra) was followed by the Hon''ble Apex Court and it was held that the award purported to create rights in the immovable property for more than Rs. 100/- requires registration in terms of Section 17 of the Registration Act.

23. Subsequently in K.J. Khosla Vs. Smt. Rajlakshmi--> this Court while referring to Satish Kumar and others'' case (supra) also held that any non-testamentary instruction which purports to create, declare, assign, limit or extinguish whether in present or future, any right, title or interest, whether vested or contingent, or the value of more than Rs. 100/- in immovable property should be registered. If the rights are created for the first time through the award itself then the award is required to be registered compulsorily. Even the view expressed in Shiromani and Others Vs. Hem Kumar and Others, was followed by the Hon''ble Apex Court in subsequent decisions.

24. The document effecting partition of joint family properties of value of more than Rs. 100/- requires compulsory registration. In the absence of such registration the document is wholly inadmissible in terms of conferring title, even though such document is admissible to prove the intention of the coparcener, but if the said proposition is applied in the given case, Madan Lal became absolute owner of the property in Rohtak by virtue of civil Court decree dated 09.01.1974 and none of his brothers were having any right, title or interest in the said property. There was no pre-existing right of any of the brothers in respect of said property derived by Madan Lal by virtue of civil Court decree. In the absence of pre-existing right of other brothers, sale deed from such award in respect of 240 sq. yards from the holding of Madan Lal requires compulsory registration. In view of proposition of law held consistently by the Hon''ble Apex Court and followed by this Court.

25. Registration of award was required to be done before making its rule of the Court. The award was legally required to be registered within four months of its

execution, if the award remains to be unregistered even after passing of the decree, the decree is inconsequential in nature and has no evidentiary value. Precisely the award in terms of 240 sq. yards of land has no meaningful connotation attached to it in terms of dimensions. The award based on such qualification of land has no mechanism of enforcing the same even if such type of award is registered, the same has no meaning.

26. In the present case award has not been registered in terms of Section 17(1)(b) of the Registration Act and, therefore, the award in question being unregistered suffers from inherent defect and the decree of the civil Court on making such type of award as rule of the Court also suffers inherent defect in terms of its execution. The award which has been made rule of the Court seems to be wholly unenforceable in law for want of necessary particulars/dimensions. The award besides being lacking in terms of material particulars suffer from its non-registration as it purported to create title for the first time in favour of Chhotu Ram, therefore, award as well as decree in question are not binding so far as the rights of the present appellant(s) are concerned. Even in one case i.e. Ramesh Kumar and Another Vs. Furu Ram and Another etc., the Hon'ble Apex Court held that if award was not genuine being collusive or sham, the Court will not make it a rule of the Court.

27. What Section 17(1)(b) of the Registration Act, 1908 requires is the creation of rights by the decree in praesenti or in future, any right created or extinguished in the past is conspicuously absent. It does not apply to the documents that merely record or proceed on the basis of any right created or extinguished in the past if the right is being created for the first time then it requires compulsory registration. A declaration of pre-existing right neither creates any right, nor extinguishes any right in praesenti or in future. Such type of declaration does not require registration. The test which is to be applied is whether there exists pre-existing right between the parties or not? Apparently Madan Lal got the property by virtue of civil Court decree dated 09.01.1974 not in recognition of any right of his brothers in the land situated in Rohtak. Madan Lal was the absolute owner of the property, therefore, the execution of sale deed in favour of Chhotu Ram was not in furtherance of any recognition of pre-existing right of Chhotu Ram vis-?-vis property held by Madan Lal in Rohtak. Therefore the proposition as sought to be laid by learned counsel for the respondents has meaningful basis in the helm of affairs.

28. Learned counsel for the respondents has argued that by virtue of agreement between the parties, the properties were put in hotch-potch of the joint Hindu family property and, thereafter condition was imposed in the agreement that Madan Lal would execute sale deed in favour of Chhotu Ram. No such proposition can be devised or held in the present case for want of any evidence to such effect. There is no evidence on record to prove that the property held by Madan Lal in Rohtak was joint Hindu family property of the parties, rather decree dated 09.01.1974 is found to be contrary.

29. Learned counsel sought to argue that only 240 sq. yards of land was available with the Madan Lal at the time of making award rule of the Court and, therefore, the sale deed dated 18.08.1986 is proved to be affected by lis pendens.

30. Firstly there is no evidence to show that only 240 sq. yards of land was in existence though an effort has been made to highlight that vide sale deed dated 17.02.1978, Madan Lal sold 580 sq. yards of land to Chandagi Ram, Suraj Bhan etc. for a sum of Rs. 8,000/-. Similarly he sold 580 sq. yards of land to Mohan Lal, Sohan Lal and Subhash Chander etc. on 17.2.1978 for a sum of Rs. 8,000/-. Madan Lal further sold 508 sq. yards of land on 23.01.1978 for a consideration of Rs. 7,000/- and finally he sold 269 sq. yards of land to Chander Bhan for a sum of Rs. 4,000/- vide registered sale deed dated 23.01.1978. It was claimed that he was left with only 240 sq. yards of land which was the subject matter of transfer in favour of Chhotu Ram by way of condition of agreement. The sale deed was executed on 28.11.2006 in favour of Jagdish Kumar.

31. Since the award remains to be unregistered and the sale deed dated 28.11.2006 came to be registered in favour of Jagdish Kumar, after the sale deed dated 18.08.1986 executed by Madan Lal in favour of the appellant the sale in favour of the appellant cannot be hit by doctrine of lis pendens by any stretch of imagination on first principle if the evidence of different sales executed by Madan Lal in favour of different persons as projected by respondents are ruled out from consideration for want of evidence, the appellant would become co-sharer along with Madan Lal in the event of sale deed dated 18.08.1986 in respect of 79 sq. yards of land. Since the area measuring 240 sq. yards is undefined area, therefore, in case of co-sharer doctrine of lis pendens is not to apply.

32. On second principle even if it is presumed that Madan Lal had already parted with land vide different parcels in favour of subsequent vendee before executing sale deed in respect of 240 sq. yards of land in favour of Jagdish Kumar, the award being unregistered cannot confer any title in favour of Jagdish Kumar even if the same has been made rule of the Court. The decree based on unregistered award is not acceptable in nature particularly the appellant who was not party to it, nor any execution was filed against her.

33. In view of award being unregistered the sale in favour of appellant being prior in point of time, the award in respect of 240 sq. yards land being wholly unspecified in terms of dimensions and configurations of the land and the decree making rule of the Court is also conspicuously silent about the dimensions of the land make the appeal of the appellant worth acceptable. Even if unregistered award is made rule of the Court that may or may not bind the party to the decree, but in any case the same does not bind the appellant in any manner.

34. The sale deed dated 18.08.1986 cannot be held to be affected by doctrine of lis pendens in any manner as the same has been executed during the proceeding of rule of the Court based on unregistered award which is nullity. Any decree

based on such award has no binding character qua the rights of the appellant who purchased the land of Madan Lal in a larger tract of land hold by him under civil Court decree dated 09.01.1974. Looked from any angle, the objections filed by the appellant were legally required to be accepted, decree of the rule of the Court based on unregistered award is not binding upon the rights of the appellant in any manner.

35. Consequently these appeals are allowed, impugned orders passed by the executing Court as well as lower appellate Court are accordingly set aside.