
(1995) 09 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2935 of 1994

Smt. Sunita Jain and Others

APPELLANT

Vs

Chander Kanta and Others

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115

Citation : (1996) 1 CivCC 276 : (1996) 112 PLR 293

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : Arun Jain, for the Appellant; Inderjit Malhotra, for the Respondent
No. 1, for the Respondent

Judgement

Ashok Bhan, J.—One Pawan Kumar died on 27.1.1987, leaving behind three sons and five daughters. Pavan Kumar, deceased, had suffered a consent decree dated 4.1.86, in favour of Sunita Jain, regarding a part of his property. Similarly, he suffered another consent decree dated 4.1.1986, in favour of his three sons; namely, Dev Raj, Balraj and Hans Raj.

2. Chander Kanta, Sudershana Kumari, Anantmala and Sushma Jain, the other four daughters, who had been deprived of the property which had been transferred by Pavan Kumar by suffering two consent decrees, filed a suit for declaration with possession to the effect that the two consent decrees suffered by Pavan Kumar, dated 4.1.1986, were illegal, void and ineffective qua their rights. Plaintiff-respondents 1 to 4 (hereinafter referred to as "the Plaintiffs"), along with the suit filed an application under Order 39 Rules 1 and 2, Code of Civil Procedure, for temporary injunction restraining the defendants from alienating the property in dispute during the pendency of the suit. Trial Court as well as the appellant Court granted the temporary injunction as prayed for. Petitioner and other defendants who had benefited by the constant decrees suffered by Pavan Kumar has filed the present revision petition challenging the orders passed by the Courts below.

3. Counsel for the petitioner argued that a mere challenge to the consent decree is no ground to grant the injunction until and unless it was shown to the satisfaction of the Court that a prima facie case existed in favour of the plaintiffs; that the rule of lis pendense would be applicable. If any property was transferred during the pendency of the suit then the same would be subject to the decision of the suit and the transferees would be bound by the decision given in the suit. As against this, the case of the plaintiffs is that the injunction has been rightly, granted by the Courts below after satisfying itself that a prima facie case existed for grant of injunction; that the order of the injunction should not be interfered with in the exercise of revisional jurisdiction until and unless it was shown that the courts below have erred in exercise of their jurisdiction, that the injunction should not be denied to the plaintiffs only because of the principle of lis pendense because it might give rise to multiplicity of suits.

4. Counsel for the parties have been heard at length.

5. A consent decree would continue to be valid till it is set aside on permissible grounds by the Court. Rule of lis pendense has been enacted to safe guard the rights of the plaintiffs in case the defendant(s) transfer the suit property during the pendency of the suit. Any transfer made during the pendency of the suit would be subject to the decision of the suit. No doubt, at times, transfer of the property during the pendency of the suit gives rise to multiplicity of the suits. There is no absolute rule either to grant the injunction or to refuse the same on the ground of lis pendense. It varies on the facts of each case. In this particular case. I am satisfied that ends of justice would be met if the petitioner and the other defendants in whose favour Pavan Kumar had suffered consent decrees, are permitted to sell the property during the pendency of the suit provided they take prior permission from the Court and after making an application to bring on record the proposed vendees before the Court so that the proposed vendees are brought on the record of this suit so as to bind them specifically to the decree which may be passed in the suit. This would not prejudice the rights of either of the parties as the property would be sold after bringing on record the proposed vendees and after taking permission from the Court to sell the property.

6. Counsel for the plaintiffs brought to my notice the order passed in another revision petition arising out of the same suit, reported as Smt. Chander Kanta Vs. Smt. Sunita Jain and Others, , to contend that this Court has already held that the plaintiffs are entitled to the injunction prayed for.

7. I do not find any substance in this submission of the counsel for the plaintiffs. The point in issue at that time before this Court was totally different than the point in issue in this revision petition. At that time, after the trial Court had granted the injunction prayed for, the appellate Court held that no ad interim injunction can be granted in the suit for declaration. The injunction granted by the trial Court was vacated by the appellate Court against which the aforesaid revision petition was filed in this Court. It was held by a learned Single Judge of this Court that the injunction could be granted in a suit for declaration. Revision

petition was accepted and the case was remitted back to the appellate Court to re-decide the matter in accordance with law. No finding was recorded by the Court that the plaintiffs were entitled to the injunction prayed for as a matter of right. After the remand of the case, the appellate Court decided the matter against which the present revision petition has been filed. The decision given by the appellate Court after remand, would give right to the party aggrieved against the said order to file a revision petition in this Court and re-agitate the matter. Similarly, I do not find any relevance of the two other namely, Muktakesi Dawn and Others Vs. Haripada Mazumdar and Another, and Shiv Kumar Mool Chand Arora v. Mool Chand Jaswant Ram Arora (1972)74 P.L.R. 925, to the controversy in hand.

8. In Smt. Muktakesi Dawn's case (supra), the Court had simply held that the injunction restraining the transfer of the property during pendency of the suit can be granted. There is no quarrel with the proposition but the same would depend upon the facts of each case whether an injunction is to be granted or not.

9. Similarly, Shiv Kumar Mool Chand Arora's case (supra) has no relevance to the point in issue in this case.

10. I have ordered that the property be transferred only after taking permission from the Court and brining on record the proposed vendees, in order to bind them to the decree which may ultimately be passed in the suit, to safe guard the interest of both the parties which, under the facts and circumstances of the present case, is just an proper.

11. The revision petition is accepted. Orders of the Courts below are set aside subject to the observations made above. No costs.