

The decree-holder bank armed with such a decree would fall in the category of secured creditor. At this stage the name of the bank cannot be deleted from the list of secured creditors. These cases are not relevant in deciding this appeal. In these cases attachment of the properties of the Companies were effected before the Companies went into liquidation and it was held that by merely getting orders of attachment, by passing of the decrees, such decree-holders did not become secured creditors. In the present cases as and when such pleas are raised, the question involved would be decided. No further comment on the subject is necessary in this case. It is stated the separate proceedings for setting aside the *ex parte* decree has already been initiated and thus other questions involved if raised on those proceedings would be separately decided. Otherwise the position of law applicable to the secured creditors has already been set at rest by the Apex Court in *M. K. Ranganatha's* case (*supra*). Till the *ex parte* decree is set aside the same is binding on the parties and in view of the same the issue was rightly decided by the Single Judge. The name of the Bank cannot be deleted from the list of secured creditors at this stage. This appeal fails and is dismissed. No order as to costs.

J.S.T.

Before : G. R. Majithia, J.

CHANDER,—Plaintiff.

versus

HARI KISHAN AND OTHERS,—Respondents.

Regular Second Appeal No. 358 of 1979.

12th November, 1991.

Transfer of Property Act, 1882—S. 52—Rule of lis pendens—Partition proceedings—Maintainability of.

Held, that S. 52 of the Transfer of Property Act embodies in its ambit the term "proceedings" and this term will include partition proceedings also. The sale effected during partition proceedings pending before a Revenue Officer will be hit by the rule of *lis pendens*. Partition proceedings operate as *lis pendens* with the result that a purchaser of undivided share pending partition proceedings takes only that property which is allotted on partition to the vendor. The plaintiff cannot avoid the partition proceedings.

(Para 7)

Regular Second Appeal from the order of the court of Shri I. M. Malik, Additional District Judge, Gurgaon dated 8th day of December, 1978 affirming that of Shri B. L. Singla Sub Judge 11nd Class, Ballabgarh dated the 29th September, 1977, dismissing the suit of the plaintiff with no order as to costs.

Claim:—Suit for declaration to be effect that the plaintiff is the owner and in possession of Khasra No. 8/22, (8-0) Khewat/Khatoni No. 71/127 out of the land Khewat/Khatoni No. 71/124-125 to 127 Killa No. 8/10-1218-19-20-21, 18/22, 24/5, 7/15, 7/7-8, 8/22 measuring 83 Kanals, 2 Marlas in which Mam Kaj son of Likhi Ram had 1/4th share which comes to 20 Kanals 15½ marlas and out of the shares of Mam Kaj son of Likhi Ram defendant No. 5 and that this Khasra No. will be kept under the ownership of the plaintiff at the time of partition of the said land situated in the revenue estate of village Hirapur, Tehsil Ballabgarh.

Claim in appeal:—For reversal of the order of both the courts below.

Nemo, for the petitioner.

H. L. Sarin, Advocate Miss Alka Sarin & Mr. Ashish Handa, Advocates with him, for the respondents.

JUDGMENT

G. R. Majithia, J.

The unsuccessful plaintiff has come up in second appeal against the judgment and decree of the first appellate Court affirming on appeal those of the trial Judge, whereby the suit for declaration that he was the owner in possession of the suit land was dismissed.

(2) The parties will be referred to in the body of this judgment as they were described in the plaint.

(3) The facts:—

The plaintiff pleaded that defendants No. 1 and 2 inherited 1/2 share each in 1/4th share of Smt. Dhanwanti widow of Hari Ram in the land measuring 85 Kanals 12 Marlas, 83 Kanals 2 Marlas and 2 Kanals 8 Marlas situated in village Hirapur, Tehsil Ballabgarh in respect of which mutation No. 1041 was sanctioned in their favour on December 27, 1972; that Barfi and Premwati, daughter of Ramji Lal succeeded to 1/4th share and Mamraj son of Likhi Ram inherited the remaining 1/4th share in the suit land; that the plaintiff purchased land measuring 8 Kanals comprised in Khewat/Khatauni No. 71/127, Rectangle No. 8 Killa No. 22 from Mamraj son of Likhi Ram for a

sum of Rs. 6,000,—*vide* registered sale deed dated June 18, 1973, that the land sold was under mortgage for Rs. 405 with Prem Raj, son of Gobind Ram, which was subsequently mortgaged with the plaintiff,—*vide* mortgage deed dated June 5, 1968; that the plaintiff got the mortgaged land redeemed from the successors-in-interest of the first mortgagee and the mortgage money was paid,—*vide* receipt dated July 5, 1973; that Mam Raj, vendor of the plaintiff, had sold his lands to Gaya Lal, etc. and Siri Ram etc., defendants No. 10 to 17 out of the land mentioned in paragraph 1 of the plaint after the sale of the suit land to the plaintiff; that defendants No. 1 to 4 are cosharers, who either sold or mortgaged their shares in the land to defendants No. 6 to 9 and 12; that Mam Raj, vendor of the plaintiff, did not sell more than his share in the land to him and the sale of the land made by him in favour of defendants No. 10 to 17 (excluding defendant No. 12) was subject to the adjustment at the time of partition; that the defendants filed an application for partition of land in the Court of Tehsildar, Ballabgarh, without impleading the plaintiff as a party and got the joint land, including the land in suit, purchased by him partitioned amongst themselves; that he came to know of the partition only on June 9, 1975 when warrant of possession was issued to the Girwar Halqa for compliance, which was to have the effect of his dispossession from the land and this led to the filing of the suit.

(4) The suit was contested by the defendants, *inter alia*, on the ground that the same had been filed in collusion with defendants No. 3 to 5; that the sale of the suit land made by defendant No. 5 in favour of the plaintiff is sham transaction; that defendant No. 5 had no right to sell the suit land after the commencement of the partition proceedings; that the plaintiff was estopped by his conduct from filing the suit and the civil Court had no jurisdiction to decide the suit; that the partition proceedings titled as "Dhanwanti v. Barfi etc." were pending when the plaintiff in collusion with defendant No. 5 entered into bogus deal in respect of the suit land alluded to in the plaint.

(5) The pleadings of the parties gave rise to the following issues:—

- (1) Whether the plaintiff is owner-in-possession of the land measuring 8 Kanals comprised in Khewat/Khatauni No. 71/127 Killa No. 8/22 as alleged ? OPP
- (2) Whether the partition order dated 7th November, 1973 has no effect on the rights of the plaintiff as alleged ? OPP
- (3) Whether the suit is bad for misjoinder of causes of action ?
OPD

- (4) Whether the suit is bad for misjoinder of parties ? OPD
- (5) Whether the suit is not maintainable as alleged ? OPD
- (6) Whether this Court has got no jurisdiction to try this suit ? OPD
- (7) Relief.

(6) The trial Court under issue No. 1 found that the plaintiff was not the owner of the land alleged to have been purchased by him; under issue No. 2 it found that the sale in favour of the plaintiff was effected during the pendency of the partition proceedings and was hit by the doctrine of *lis pendens*; that issues Nos. 3 to 6 were answered against the defendants and in view of the findings under issues No. 1 and 2 the suit was dismissed.

(7) The first appellate Court found that the sale effected by defendant No. 5 in favour of the plaintiff was hit by the rule of *lis pendens* since it was made during the pendency of the partition proceedings before the Assistant Collector Ist Grade, Ballabgarh. Defendant No. 5 mortgaged the suit land to the plaintiff on June 5, 1968 for Rs. 2,500. The plaintiff purchased the suit land on June 16, 1973 for Rs. 6,000 and after the purchase got it redeemed from the successors-in-interest of the mortgagee on July 5, 1973. The partition proceedings commenced on December 8, 1970 and culminated on November 7, 1973 as is evidenced by the copy of the order dated November 7, 1973 passed by Shri B. K. Sharma, Assistant Collector, Ist Grade, Ballabgarh (Ex. C-1). The sale in favour of the plaintiff was effected during the pendency of the partition proceedings and is hit by the rule of *lis pendens*. Section 52 of the Transfer of Property Act embodies in its ambit the term "proceedings" and this term will include partition proceedings also. The sale effected during partition proceedings pending before a Revenue Officer will be hit by the rule of *lis pendens*. Partition proceedings operate as *lis pendens* with the result that a purchaser of undivided share pending partition proceedings takes only that property which is allotted on partition to the vendor. The plaintiff cannot avoid the partition proceedings. He is bound by the same since his vendor Mam Raj was a party to the partition proceedings.

(8) For the reason stated supra the appeal is devoid of any merit and the same is dismissed accordingly, but with no order as to costs.

S.C.K.