

Before Mahesh Grover, J.

HARJIT KAUR AND OTHERS—*Petitioners*

versus

VINOD KUMAR AND OTHERS—*Respondents*

CR No. 4622 of 2013

March 4, 2014

Code of Civil Procedure, 1908 – O. 21 Rls. 97, 98 and 102 – Execution of decree – Alienation pendent lite – Petitioners decree holders – During pendency of suit land sold by a defendant – Warrants of possession returned unexecuted with a report that property stood in the name of a company and warrants were incapable of being executed – Executing Court passed order that transferee was not a party to the proceedings – Petitioners filed Civil Revision – Held, alienation recorded during the pendency of the suit would not in any way place any fetters upon rights of a decree holder to seek possession of the suit property which has been alienated ostensibly to defeat the rights of the decree holder - Fraud would nullify and vitiate everything – Actions and consequences of a fraud are a nullity in the eyes of law – Impugned order set aside with categorical direction to the Executing Court to forthwith execute the decree and retrieve possession from transferee company and restore the same to petitioners.

Held, that I am in complete agreement with the contention raised by the learned counsel for the petitioners more particularly when the respondents have no justification to offer in view of the finality lent to the decree. If one were to faithfully observe the language of Order 21 Rules 98 and 102 of CPC, then any alienation recorded during the pendency of the suit would not in any way place any fetter upon the rights of a decree holder to seek possession of the suit property which has been alienated ostensibly to defeat the rights of the decree holder. In this case, there are glaring facts which indicate a complete fraud having been played by the predecessor in interest of respondent Nos. 2 to 8 who initially forged the power of attorney and sold it to the predecessor in interest of respondent No. 1 herein. The fraud would nullify and vitiate everything. It is a settled proposition of law that actions and consequences of a fraud are a nullity in the eyes of law. Therefore, there would be no justification in keeping the petitioners

away from the execution of their successful claim over the property.

(Para 6)

Further held, that the predecessor in interest of respondent Nos. 2 to 8 (Krishan Lal) who clearly committed a fraud which led the petitioners into a prolonged round of litigation and agony which has still not ended at least till the passing of the order by this Court, he cannot be let off without any consequences. The Court would have ordinarily ordered his prosecution, but for the fact that he is no longer in the world, therefore, it deems it appropriate to inflict monetary consequences upon him which are determined at Rs. 5 lakhs which would cover the unauthorized use of the property from 1972 and expenses for litigation which the petitioners had to undergo due to his fraudulent act. The costs would be recovered from the estate of Krishan Lal and would be compensatory in nature to be given to the petitioners.

(Para 8)

K.S. Boparai, Advocate, *for the petitioners*.

Sanjiv Gupta, Advocate for respondent No. 1.

Adish Gupta, Advocate for respondents Nos. 2, 3, 5 & 8.

MAHESH GROVER, J.

C.M. No. 4025-CII of 2014

Application is allowed and the accompanying document is taken on record.

Main Case

(1) The petitioners are decree-holders who seek to get it executed, but their attempts have been frustrated on account of the fraudulent act of the respondents who by initially usurping their land, have also alienated it further so as to render the decree in favour of the petitioners virtually illusory.

(2) The petitioners initiated a suit for possession on the basis of ownership on 15.6.1988 in which the predecessors in interest of the present respondents namely Krishan Lal and Sham Lal were impleaded as the defendants. Krishan Lal had allegedly forged a power of attorney and sold the land in question to Sham Lal. The present respondents is the revision petition are the LRs of both Krishan Lal and Sham Lal. The learned trial Court dismissed the suit on 26.9.1994 which resulted in

filing of an appeal where the appellant i.e. the petitioners were successful. In its order dated 21.2.2000, the Appellate Court remanded the matter back to the trial Court for a decision afresh which resulted in the decree in question being passed in favour of the petitioners on 7.2.2007. It was held by the learned trial Court that the General Power of Attorney executed in favour of Krishan Lal was forged and the logical corollary to this was that Krishan Lal had defrauded Sham Lal as well, to whom the land had been sold. The decree of possession having been passed, liberty was also granted to Sham Lal to proceed against the perpetrator of the fraudulent transaction i.e. Krishan Lal. No further appeal was preferred against this order of the learned trial Court dated 7.2.2007 rendering it final for the purpose of execution.

(3) The fact that needs to be noticed is that during the pendency of the proceedings, this land was sold by Sham Lal in favour of one Golden Forest Company on 13.6.1996.

(4) In execution, warrants of possession were issued but the revenue officers returned the warrants unexecuted with a report dated 3.3.2011 that the suit property stood in the name of M/s. Golden Forest (India) Ltd. on the strength of sale deed dated 13.6.1996 rendering the warrants of possession incapable of being executed. The learned Executing Court passed an order dated 24.8.2012 wherein it observed that the Golden Forest Company is not a party to the proceedings and relying upon its knowledge it said that the Hon'ble Supreme Court was seized of the matter in a case titled *Securities and Exchange Board of India versus Golden Forest (India) Limited*, T.C. (C) No.68 of 2003 wherein appropriate directions had been issued and a Committee constituted for satisfaction of the claims of various creditors. The petitioners by virtue of the application filed today, have placed on record the proceedings of the Committee answering their query to observe that “the dispute of the present nature is not covered by any of the orders/directions passed by the Hon'ble Supreme Court of India relating to competence, authority or jurisdiction of this Committee - GFIL” and further stated that since the matter is admittedly of civil nature, therefore, the applicants, if so advised, may approach the Civil Court. It is in the backdrop of this that the learned counsel for the petitioners has referred to the provisions of Order 21 Rules 97, 98, 102 C.P.C. and stated that they being the decree-holders, cannot be deprived of the possession even if the property has been sold during the pendency of the suit. For the purpose of reference, Order 21 Rules, 97, 98, 102 C.P.C. are extracted here below :--

“97.Resistance or obstruction to possession of immovable

property.— (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. Orders after adjudication.— (1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application ; or

(b) pass such order as, in the circumstances of the case, it may deem fit.

(2) Where upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

XX

XX

XX

102. Rules not applicable to transferee pendente lite.—

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.”

(5) Reliance has also been placed on a judgment of the Hon'ble Supreme Court in *Usha Sinha versus Dina Ram and others*¹, wherein the Hon'ble Supreme Court regarding the doctrine of *lis pendens* has stated that a third party purchasing property from a party to the suit which is the subject matter of litigation, cannot resist or obstruct or object the rightful claim of the decree holder. For the purpose of reference, paras 12, 18, 21 to 24 of the judgment are extracted here below :-

“12. Bare reading of the rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law. He should be careful before he purchases the property which is the subject matter of litigation. It recognizes the doctrine of *lis pendens* recognized by Section 52 of the Transfer of Property Act, 1882. Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree holder will never be able to realize the fruits of his decree. Every time the decree holder seeks a direction from a Court to execute the decree, the judgment debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the rule has been enacted.

XX

XX

XX

18. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of '*lis pendens*' prohibits a party from dealing with the property which is the subject matter of the suit. '*Lis pendens*' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor,

¹ 2008 (3) RCR (Civil) 145

he cannot seek benefit of Rule 98 or 100 of Order 21.

xx

xx

xx

21. We are in respectful agreement with the proposition of law laid down by this Court in *Silverline Forum*. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and therefore, is not entitled to get his claim adjudicated.
22. For invoking Rule 102, it is enough for the decree holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order 21.
23. So far as the present case is concerned, the facts are no more in dispute. As already noted earlier, Title Suit No.140 of 1999 was instituted by the respondent-plaintiff on April 10, 1999. Thus, the litigation was pending in respect of the property and the matter was sub judice. The appellant thereafter purchased the property from original defendant Nos. 4 and 5 by a registered sale deed on February 15, 2000 i.e. during the pendency of the suit. It is also not in dispute that the ex parte decree came to be passed against the defendants on May 24, 2001. In the situation, in our considered opinion, the doctrine of *lis pendens* would apply to the transaction in question, and the High Court was wholly right in holding that the case was covered by Rule 102 of Order 21 of the Code. The appellant could not seek protection of pendency of suit instituted by her. The executing Court was not justified in granting stay of execution proceedings. The High Court was, hence, right in setting aside the order of the Executing Court.
24. Rule 29 of Order 21 of the Code deals with cases wherein a suit has been instituted by the judgment-debtor against the

decree-holder and has no relevance to cases of *lis pendens* wherein transfer of property has been effected by the judgment debtor to a third party during the pendency of proceedings. The High Court, in our opinion, rightly held that the appellant could not be said to be a 'stranger' to the suit inasmuch as she was claiming right, title and interest through defendant Nos. 4 and 5 against whom the suit was pending. She must, therefore, be presumed to be aware of the litigation which was before a competent Court in the form of Title Suit No.140 of 1999 instituted by the present respondent against the predecessor of the appellant. As held in *Bellamy*, the fact that the purchaser of the property during the pendency of the proceedings had no knowledge about the suit, appeal or other proceeding is wholly immaterial and he/she cannot resist execution of decree on that ground. As observed in *Silverline Forum*, a limited inquiry in such cases is whether the transferee is claiming his right through the judgment-debtor. In our judgment, the High Court was also right in observing that if the appellant succeeds in the suit and decree is passed in her favour she can take appropriate proceedings in accordance with law and apply for restitution. That, however, does not preclude the decree holder from executing the decree obtained by him. Since the appellant is a purchaser *pendente lite* and as she has no right to offer resistance or cause obstruction and as her rights have not been crystallized in a decree, Rule 102 of Order 21 of the Code comes into operation. Hence, she cannot resist execution during the pendency of the suit instituted by her. The order passed by the High Court, therefore, cannot be said to be illegal, unlawful or otherwise contrary to law."

(6) I am in complete agreement with the contention raised by the learned counsel for the petitioners more particularly when the respondents have no justification to offer in view of the finality lent to the decree. If one were to faithfully observe the language of Order 21 Rules 98 and 102 C.P.C., then any alienation recorded during the pendency of the suit would not in any way place any fetter upon the rights of a decree holder to seek possession of the suit property which has been alienated ostensibly to defeat the rights of the decree holder. In this case, there are glaring facts which indicate a complete fraud having been played by the predecessor in interest of respondents No. 2 to 8 who initially forged the power of attorney and sold it to the

predecessor in interest of respondent No.1 herein. The fraud would nullify and vitiate everything. It is a settled proposition of law that actions and consequences of a fraud are a nullity in the eyes of law. Therefore, there would be no justification in keeping the petitioners away from the execution of their successful claim over the property.

(7) The petition is, therefore, accepted and the impugned order is set aside with a categorical direction to the Executing Court to forthwith execute the decree and retrieve the possession from M/s. Golden Forest (India) Ltd. and restore the same to the petitioners since any other course would only perpetuate an act whose object is in fraud and the subsequent transfer i.e. M/s. Golden Forest cannot obstruct the execution of a decree. They would indeed be at liberty to have recourse to remedies under the law.

(8) Before parting with the order, I cannot but comment upon the fact that the predecessor in interest of respondents No. 2 to 8 (Krishan Lal) who clearly committed a fraud which led the petitioners into a prolonged round of litigation and agony which has still not ended atleast till the passing of the order by this Court, he cannot be let off without any consequences. The Court would have ordinarily ordered his prosecution, but for the fact that he is no longer in the world, therefore, it deems it appropriate to inflict monetary consequences upon him which are determined at ` 5 lacs which would cover the unauthorized use of the property from 1972 and expenses for litigation which the petitioners had to undergo due to his fraudulent act. The costs would be recovered from the estate of Krishan Lal and would be compensatory in nature to be given to the petitioners. The Executing Court is directed to ensure that the execution is carried out within two months from the receipt of a copy of the order and a report sent to this Court. Any attempt made to obstruct the execution would be viewed by this Court as an act of defiance and liable to be proceeded with under the Contempt of Courts Act. The petitioners would be at liberty to apprise this Court appropriately in such an eventuality.

J.S. Mehndiratta