



MESNE PROFITS: A CLAIM OF THIRD PARTY ON SUIT PROPERTY

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INTRODUCTION

A 'suit property' or as some may prefer to call it as 'dispute property' is a property upon which a dispute arises between two or more people claiming their right on the property as their owner but their rightful title on the said land is still unsettled and that is when the suit is brought before the court for determining the right owner. The dispute between these people claiming their right on an immovable property arises on various grounds including, but not limited to, claiming title as a gift, rightful inheritance or other family disputes, trespassing, wrongful possession, etc. But have you ever wondered what happens when these dispute property or suit properties are purchased by a third party *pendente lite*, I. e., "when the judgement for the same suit is yet to be decided" or when "the judgement is still awaited" and the judgement is delivered after sometime in favour of the party who sold the property. Will the third party be considered as the rightful owner when the dispute is settled? Will the third party get the claims from the party to the suit from whom he purchased the disputed property?

There are different issues and approaches in the court when the suit of this nature stands before the law. And there are various parts at which a third party or the purchaser of the property can claim his title on the same. This paper answers all the aforementioned questions emphasizing on the rights and claims of the third party on the property purchased *pendente lite*.

IS THIRD PARTY THE RIGHTFUL OWNER OF THE SUIT PROPERTY?

Ownership comes with a large number of rights, above all of these rights, the right of the possession of the property stays at the top. Possession is well considered to be the prima facie evidence for ownership. In other words, it can also be comprehended that mere possession is considered to be a sufficient proof of ownership.

Although, the court does not allow selling of the suit property while the judgement of the same is still awaited because the other party, if came into their notice, can seek permission from the court to refrain the party who is selling the property by filing a temporary injunction against them. But it does not give right to the court to declare the sale agreement null or void if the property is sold, not to ignore the circumstances of the case. there are many cases where these property are still sold to the third party and adds another person to jump into the picture of the awaited case, sometimes making the situation more complicated and resulting in the pro longed or delayed judgements taking many more years for the already delayed dispute to be settled than the original time it would have been taken to resolve the issue.

There are many cases where at times the judgement is delivered against the party who sold the property and the sale agreement between the seller, here in the party of the original suit, and the buyer, here in the third party to the suit, can be held unreasonable and the title is passed to another party to the suit without any question. The provisions for the same can be clearly seen in section 52 of the Transfer of Property Act which defines the doctrine of the *Lis Pendens*. The literal meaning of the doctrine is that nothing new



shall be introduced in the suit when proceedings are still in continuation, which gives clear defense to the other party to refrain the transfer of property. The doctrine of Lis Pendens mentioned in section 52, states that:

“Transfer of property pending suit relating thereto.— During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose. Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force”¹

Therefore it can be stated from the above section that if the transfer of property to the third party refrain the rights of any parties to

the suit when the judgement is declared then such transfer shall be unacceptable in the eyes of law. There are various grounds upon which the party can take defense for the same under the said provision.

But there are also some exceptions to the doctrine of Lis Pendens which grants third party to claim their rights to the immovable property. If the final order to the suit is in favour of the party who is the transferor of the property then said agreement of transfer of property or sale of property shall be considered justified in the eyes of law which accordingly makes the transferee or the third party the rightful owner of the property.

In some similar cases it was held by the court that “A bare perusal of the said section would clearly demonstrate that a third party purchaser of a suit property pending litigation, without the permission of the Court cannot have any independent right over and above the right of the seller who happened to be the party to the Lis.”² And it can also be said that “Section 52 merely prohibits a transfer. It does not state that the same would result in an illegality. Only the purchaser during the pendency of a suit would be bound by the result of the litigation. The transaction, therefore, cannot rendered void and/or of no effect.”³

Wherefore, it is safe to say that transferee shall be bound by the order of the court and will be considered as the party of the suit and the rightful owner of the property as he decided to step into the shoes of the seller in the suit and thus be the owner through the judgement.

¹ Transfer of Property Act, 1882

² T.G. Ashok Kumar v. Govindammal – (2010) 14 SCC 370

³ Hardev Singh v. Gurmail Singh - AIR 2007 SC 1058, (2007) 2 SCC 404



Although, he has to give sufficient evidence as to title of the property being transferred to him legally by the transferor through required registered documents if the court may ask to provide so under the provisions provided in the Transfer of Property Act.

CAN HE BE CONSIDERED THE OWNER WHEN THE DISPUTE WAS RESOLVED?

Determining whether the third party was the owner of the property at the exact same time when the dispute was settled with the order granted by the court becomes a plain sail once the rightful ownership of the property is resolved by the law in favour of the transferee. The question takes place when mesne profits are claimed for the computation of the justified amount.

The Transfer of Property Act again provides numerous rules to make a defense for proving this challenge. The rules can be seen in some sub clauses of the section 55 of the same Act, which provides for the rights and liabilities of both seller and the buyer of an immovable property. It is to be noted that the section aforesaid is also applicable in the cases where the title of the property in controversy is purchased by another person who was originally not the party to the suit.

Among all the clauses grounded in Section 55 of the Act, some rules which are pertinent to the said matter are:-

“55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or

such of them as are applicable to the property sold:

(1) The seller is bound—

(d) On payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place.

(f) To give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power

(4) The seller is entitled— (a) to the rents and profits of the property till the ownership thereof passes to the buyer.

(6) The buyer is entitled— (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof.”⁴

⁴ Transfer of Property Act, 1882



According to these clauses, one can say that transfer of ownership is done once the sale deed is executed by signing and registration of the same. However, the question what is the right time and place of the execution is not yet specified in law but it is said that the transferee is the owner of the property from the day the deed was executed although he can claim his possession later whenever he so requires.

The seller is also required to present and give with good faith, all the documents pertaining to the right of the title of the property to the buyer which are in his possession and in his power. None of these documents or any other fact that can affect the buyer later shall be concealed from him in order to make bonafide agreement which comes under the preview of sub clause 3 of the section 55.

It can also be argued under sub clause 4 that no seller can deny the possession of that particular land on the mere ground that full payment of the property is not made yet. And sub clause 6(a) is noteworthy as it provides that all the future rights and claims of the property are also transferred with the execution of the sale deed and seller has no right to indulge in order to benefit him malevolently from the sold property unless the contrary.

So as per these sections it can be said that in the case of dispute property purchased pendente lite the right of third party begins at the time when the conflicted property is purchased and not when the suit is resolved.

RIGHT TO CLAIM MESNE PROFITS

Third party right to claim mesne profit becomes a piece of cake when the ownership

is established. Some might contend here that even though property is transferable according to law, mesne profits cannot be transferred and one should not claim his right on them if they were not the party to the original suit but when the casted doubt upon the ownership of the transferee at the time of order is loud enough to be incontrovertible then the quest of transfer of mesne profit becomes vague as it becomes the undeniable right of the title holder of the land to claim mesne profit as he is the rightful owner in terms of section 2 sub clause 12 of Code of Civil Procedure of India.

Section 2 of the said Civil Procedure Code provides with a number of definitions among which sub clause 12 of the same section is where the definition of mesne profits can be found which goes as - "mesne profits of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession".⁵ Wrongful indulgence of a person in the property of another can make some damages which are beyond any repair to the property of the person with the rightful title and in order to compensate for these irredeemable damages the law provides with grant of mesne profits to the owner of the property which are compensated by the wrong doer who shows his interest in property with malafide intentions to deceive the court.

Is it as already stated above that possession is the ground of proving the ownership but if a person is successful in contending his right on the property over the other person, the one

⁵ Civil Procedure Code, 1908



with the prior possession, then the other person shall be denied his right over the property.

The claim of mesne profit arises when unlawful possessor deprives the actual owner of the property to his legal or lawful right on his own land. In order to compensate mesne profits are granted for all the loss he has suffered over the time. At times, mesne profits granted not just for the damages occurred in the past but also for the future losses which the owner may have to bear from his pocket without even having any idea of the damage created while the unlawful possessor had his interest on land. The granting of the future mesne profits completely depends upon the mercy of the court, if it deems fit in the eyes of court to grant the same otherwise only past damages will be recovered.⁶

The definition of mesne profits under the provision of section 2 sub clause 12 also provides for the interest on mesne profits. The rate of interest to be provided for recovery of mesne profits varies from case to case in regard with the circumstances of each of them. Since there is no particular law governing the rate on which mesne profit shall be computed, the court is bound to determine the same which for the most parts is granted at the rate of 6 percent per annum. The order 20 rule 12 of Civil Procedure Code plays a vital role in determination of mesne profits for past and future. According to this rule the party can also ask for future claims up to 3 years and not more than that.

CLAIM WHOLE OR IN PARTS: STILL A QUESTION BEFORE LAW

⁶ www.legalservicesindia.com

As of now, after contending the rightful title of the property and mesne profits in favour of the third party, the question here occurs now, if the third party will get all the mesne profits. Some might appeal that the transferor must get all the mesne profits because he was the owner when the dispute was suited before the court while others might claim that transferee shall be entitled to all the mesne profits because he has the ownership as it was transferred to him by way of sale and at the time of the execution of order he was in the possession.

Answer to which is no, neither the transferor nor the transferee can claim for whole of the mesne profits. To begin with the, it is true that the transferor was in the possession when the suit was filed but he transferred his rights to transferee by way of sale, further more transferee came into the light of the suit pendente lite, thus he did not bear the loss suffered by the transferor before he jumped into the picture.

So in order to have a healthy trial, the court can pass an order stating that the mesne profits and other claims shall be shared between both the transferor and the transferee. The transferor can claim his part of profits for the period starting from filing of suit till the date of execution of sale agreement and transferee can claim his part from the date on which the rights of property transferred till the date of execution of order granted by the court.

CONCLUSION

As it can be clearly seen that determining the claim and computing of accurate amount of mesne profits can be a back breaker as different question arises at various stages of



the suit but answering the correct question can resolve the issue within the reasonable time granting the parties the benefit of speedy trials before the court, instead of unexplainable and unjustifiable delayed judgements.

One should be very particular about which query to be answered first in order to steer clear of any chaos made while elucidating. In addition, the transferee of the conflict or the suit property has the right over the mesne profits granted to transferor by the order of court with due diligence from the period in which he earned the possession of the property till the dispute was resolved in the court of law.

Furthermore, If the factual matrix of the case states that the person with wrongful possession has been living on the same land of conflict for more than 12 years without any disturbances created by the owner then he shall be considered as the owner of the property without any contentions under the provisions of adverse possession and third party cannot claim their on the property by any ground even if the property was sold to them pendente lite. But if the contentions are argued against person with wrongful possession and his malevolence in acquiring the suit property is proved in the eyes of law then he shall be deprived of the title. But the burden of proving the contention aforementioned shall lie upon the transferor and not the transferee of the suit property.

In general, the assessment of the profit is done on the basis of rental value of the land or other profits earned by the unlawful possessor. However, this practice of assessment was struck down by the court of law. So as for now, the provisions governing

the rule of mesne profits does not provide any thing for its assessments or on what basis the assessment of mesne profits shall be done. Today there are some basis on which quantum of assessments of these profits are computed which is in discretion of court. In simple words, the mesne profit shall be computed on the basis of what is earned by wrongful owner with due diligence eliminating the costs he beard for the maintenance of property.

In conclusion, the mesne profit is a right of both transferor and transferor but determination of these profits and computing the right amount is burdened in the hands of court. The court may or may not grant mesne profits until it deems fit to the court after analyzing the facts and circumstances depending upon the requirement of the case.
