

**THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CR No. 2966 of 1999 (O&M)  
Date of decision: July 31, 2015

Sant Kaur

...Petitioner

Versus

Lakhwinder Singh and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE K. KANNAN**

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Munish Gupta, Advocate,  
for the petitioner.

Mr. Parshotam Lal Singla, Advocate,  
for respondent No.2.

**K. KANNAN, J. (Oral)**

1. The revision petition is against the order passed by the executing court on an objection taken by a person claiming to be a legal representative of the judgment-debtor. The court auction purchaser who had purchased a property belonging to the judgment debtor Satwant Singh claimed the right to property under auction held on 3.4.1997, confirmed on 14.6.1997 and sale certificate issued on 16.7.1997. The sale proceedings had commenced after the death of Satwant Singh after bringing on record the nephews (sister's sons) of the judgment debtor. They claimed interest in the estate through a Will alleged to have been executed by Satwant Singh. When they moved the application to implead claiming on the Will, the decree-holder raised no objection and the representatives had originally

taken sometime to make the payment failed in their undertaking and allowed the attachment and sale to take place. Amongst bidders of the auction was the sister of the judgment debtor, who incidentally was another daughter of the petitioner.

2. The petition was filed by the mother of the judgment debtor contending that the executing court had allowed for the impleadment be made of the nephews as the legal representatives without proper inquiry of their status as such. According to the mother, her son did not execute any Will and she, as class I heir, was the only person entitled to his estate. The second objection was that the petitioner's interest in the property could not have been allowed to be knocked out in an auction without addressing her right in the manner contemplated under Section 50 of the Civil Procedure Code (for short '**the Code**'). According to her, she was the owner of the whole property and right could not have been lost by merely allowing for her grand son to be impleaded, who had no right to the property and the court auction sale cannot operate to extinguish her proprietary right to the property left behind by her deceased son. It was further contention that the property was very valuable and it had been sold for a grossly inadequate consideration of ₹1.40 lacs and odd. The sale had been vitiated. The invalidity of the sale would start from want of notice to the petitioner as a legal heir and that the entire proceedings of sale and the action of the purchaser of the deliver would require to be stopped and her own right confirmed.

3. The petitioner's objections before the executing court were rejected on a factual consideration that the grand sons of the petitioner were approaching the court on the basis of a Will voluntarily, when the petitioner

did not take any action to implead herself as a legal representative of the deceased son. It was pointed out that the petitioner had actually allowed for mutation of revenue entries to be made from the deceased' son to themselves where copy of the Will had been referred to and the petitioner had not made any objection for the same. The court found also that the petitioner's own daughter made a vain bid at the time of court auction to purchase and the petitioner, who is residing in the same house as her daughter making bid in the court, ought to have been known about the pendency of the proceedings and if she had allowed the sale to take place, it was too late to seek for any objection at the time of delivery of the property. The court rejected the other contentions regarding alleged impropriety in the procedure and alleged inadequacy of the consideration.

3. The learned counsel appearing on behalf of the petitioner would argue that the court could not have accepted the impleadment brought at the instance of her grand children on the mere basis of a Will which was unregistered. There ought to have been an adjudication regarding the validity of the Will and when the petitioner was staking her own claim to the property as a legal heir, the court could not have defeated her right without entering a finding on the validity of the Will on the basis of which her grand children were impleaded. The counsel would state that the proceedings for mutation had been brought about by a fraud perpetrated by her grand children and the order of the Collector had been challenged in the higher forum and they have not concluded. It is also the contention that under Section 50 of the Code, the property that could be lawfully sold could only be the property which would come to the hands of the legal representatives and the court executing the decree ought to compel the

representative to produce appropriate proof of ascertaining the liability. The said assessment was not done. The counsel would also emphasise on the inadequate consideration that had vitiated the sale on account of the illegalities committed for bringing the property to sale.

5. When the decree is to be put in execution by a person who held a claim of money against the judgment-debtor, the amended provisions of Order 22 of the Code made by this High Court amendment does not compel only the decree holder to take steps. It makes possible for either the plaintiff or the defendant and since it was at the stage of execution, it could be either the petitioner or the respondent to move an application for impleadment by disclosing the interest in the estate. When this impleadment was sought by the nephews of the judgment debtor, they had the benefit of even obtaining mutation of entries in relation to the property in their names. At the inquiry before the court below, the court auction purchaser was also relying on a statement alleged to have been made by the petitioner herself before the revenue authorities acceding to the Will propounded by the grand children. The court at that stage was not obliged to undertake serious investigation of all the persons who could have been legal heir but for the Will. If the executing court itself had not impleaded the petitioner, it was only because a procedure which should have been possible for the petitioner to adopt by seeking for impleadment voluntarily had not been done. If the decree-holder also had no objection to the petitioner's grand children to be impleaded when they made a claim through a Will alleged to have been executed for the purpose of impleadment, the court was competent to accept a Will on its prima facie proof and was not required under the law to direct an adjudication, specially when there was no contest. The continuation of

the proceedings at the instance of the decree-holder against the person who had voluntarily impleaded themselves could not, therefore, be faulted.

6. The point that still requires consideration is, whether the representation of the petitioner's grand children was sufficient to bind the petitioner also. It is essentially a question of fact of whether a person who represented the estate did act to protect it or was acting in collusion with the decree-holder himself that exposed the real legal heirs to the risk of losing the estate. If, in this case, there was any proof or evidence, that her own grand children were colluding with the decree-holder and had been reckless in not protecting the estate, then there should have been no difficulty for further examination of how the petitioner could still lay a claim in relation to the property. In this case, there was no such pleading or proof, except a wild statement that she was duped by her grand children and they had been guilty of fraud in securing the mutation of entries by falsely propounding a Will. Again the conduct of the petitioner living along with a daughter who was even making a bid at the auction was surely relevant to examine whether the petitioner could have had the knowledge of the proceedings and whether the decree-holder was deliberately concealing any information about the pendency of the proceedings from the knowledge of the petitioner. Even the least of care on her part would have revealed that the estate of her son was in court proceedings. If one of the co-residents in her house was attending the court to make a bid for purchase of the son's estate which was in the court auction, it is most artificial for the person to plead ignorance of the entire court proceedings. The court proceedings could not have been held without her knowledge.

7. It is not as if that the property which is sold cannot affect her

proprietary right by virtue of Section 50 of the Code. Section 50 of the Code is statutory recognition of what is most logical that a legal representative cannot be personally liable for any debt of a deceased judgment-debtor other than to the extent for which they come by the benefit of such estate. If that estate was in the hands of the grand children claiming under Will there was no further inquiry contemplated under the said section to allow for any restrictive liability to be cast on the legal representative. If the mother would have also been made as a party, the whole of the estate still would have been brought for sale unless the mother herself was prepared to pay the entire amount claimed in the sale warrant and was prepared to discharge the debt. Once a property was sold then the protection that was possible for the petitioner could have been only in the manner contemplated under Order 21 Rule 90 of the Code. Independently of what right the judgment debtor had, the petitioner could not have obtained any better right. If Satwant Singh had been alive and the property had been sold for a specified amount under the decree, he was bound to bring an action to set aside the sale, for, court auction proceedings could not have been simply ignored as not binding. The ground which was available for the judgment debtor could be the only ground also available for a person claiming under him. In this case the sale had taken effect on 3.4.1997 and the sale certificate was also issued without any objection coming from the petitioner. If the sale certificate was issued, it was a manner of saying that the sale confirmation took place without any objection from the petitioner which she could have caused, including her objection that the sale was affected by material irregularity and inadequate price itself was on account of such material irregularity. She had not taken such attempts.

8. Before concluding, I must observe that inadequate price itself is not a ground to set aside the sale. The material irregularity in the conduct of sale must be such as to bring immediate nexus to the inadequacy of a sale. There had been no attempt made anywhere before the court below that the sale was vitiated by any material irregularity. The official acts are presumed to be done correctly and mere inadequacy of price cannot be assumed to be by any irregularity. Specific averment of such irregularity and proof must be brought before the court. There was no such plea.

9. For all the reasons given above, I would find that the property was sold by impleading the persons who had a sure interest disclosed in court and the executing court had committed no wrong in allowing for the representation of the petitioners' grand sons to be sufficient to allow for sale to take place. The sale is binding on the petitioner also for the reason that the representation of the grand sons was sufficient and they held no interest adverse to the petitioner. The sale cannot be assailed also on the ground that there had been no ground set forth for setting aside the sale and within the time in the manner contemplated by law and explained above.

10. During the pendency of the revision petition, the mother has also died and the petition is being prosecuted by her daughter, who had taken part in the court auction and who is a scribe in the Will propounded by the grand children who have been impleaded parties. There is literally nothing surviving for the daughter to challenge before this court.

11. The impugned order is maintained and the revision is dismissed.

**July 31, 2014**  
prem

**(K.KANNAN)**  
**JUDGE**