

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 1435 of 2015

Date of Decision: March 10, 2015

Jaswinder Pal and another

.....Petitioners

Vs.

Vikas Kumar and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Onkar Rai, Advocate
for the petitioners.

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M.M.S. BEDI, J. (ORAL)

The impugned order is an adjudication of the objections of a third party and will be deemed to be an order under order 21 Rule 103 CPC. The revision petition can be dismissed, following the Full Bench judgment of the Andhra Pradesh High Court in **Gurram Seetharam Reddy Vs. Smt. Gunti Yashoda and another**, AIR 2005 AP 95, wherein it has been laid down that orders passed under Order 21 Rules, 58, 98 or 100 CPC are appealable under Section 96 CPC. In **M/s Sunil Auto Service Vs. Parikshant Suri and others**, 2011 (1) RCR (Rent) 452, it is held that the appeal lies against the impugned order. Similar is the ratio of the judgment

in **Jagroop Singh Vs. Boria Khan**, 2002 (4) RCR (Civil) 336, wherein it has been held that where an application has been adjudicated upon under Order 21 Rule 98 or Rule 100 CPC, such an order of adjudication have the force of a decree appealable under Rule 103. It was held in the said judgment that revision is not maintainable against an appealable order.

Learned counsel for the petitioners has placed reliance on judgment in **Sameer Singh and another Vs. Abdul Rab and others**, 2014 (4) RCR (Civil) 914 contending that the Apex Court has held that in case of erroneous exercise of jurisdiction by a subordinate Court, while deciding objections under Order 21 Rule 98 to Rule 103 CPC, determining the right, title or interest of the objector in immoveable property, the Court has got authority to adjudicate all the questions including the claim of a stranger who apprehends dispossession.

I have gone through the said judgment. The said judgment does not help the petitioners as in the said judgment it has been clarified that if a Court adjudicates the objections under Order 21 Rule 98 or Rule 100 CPC, the said order shall have the force is if it were a decree and it will be a deemed decree. If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. It has been observed in the said judgment following **Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and another**, AIR 1997 SC 856 that if an Executing Court only expresses its inability to adjudicate by stating that it lacks jurisdiction than the status of an order has to be different. The

judgment in **Sameer Singh's** case (supra) had been passed in a case where the Executing Court had failed to exercise its jurisdiction vested in it holding that it had become functus officio and that it could not launch any inquiry and the facts and circumstances of said case are different. The petitioner-objectors being strangers to the decree for specific performance, claiming right, title and interest in the decretal property had raised objections which have been decided by them vide impugned order by the Executing Court. The objections were certainly maintainable as per judgment in **Brahmdeo Chaudhary's** case (supra) but the order passed by the Executing Court dismissing the objections is certainly an adjudication of the right, title and interest of the petitioner/ objectors. The order passed would be an appealable order as per the Full Bench judgment of Andhra Pradesh High Court in **Gurram Seetharam Reddy's** case (supra).

In view of the above, the revision petition is dismissed with liberty to the petitioners to avail the alternative remedy, if advised so.

March 10, 2015
sanjay

(M.M.S.BEDI)
JUDGE