

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3196 of 2010 [O&M]
Date of Decision : February 21st, 2015

Rana Shamsher Singh and others

.... Petitioners

Versus

Balbir Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Ishwar Lal, Advocate,
 for the petitioners.

 Mr. Parteek Gupta, Advocate
 for the respondent.

Dr. BHARAT BHUSHAN PARSOON, J.

This revision petition by the Judgment Debtors [JDs], petitioners herein, is directed against order dated 18.1.2010 [Annexure P/2] regarding issuance of warrants of possession and order dated 19.4.21010 [Annexure P/4] whereby the Execution Petition was dismissed as satisfied as the Decree Holder did not want to proceed further with the same.

2. It is claimed that the impugned orders were made by the Court below at the back of the petitioners and are liable to be set-aside. It is canvassed further that respondent – Balbir Singh was not the sole L.R. Of Sohan Singh [Decree Holder] now deceased and rather, Decree Holder, Sohan Singh had left behind four sons and three daughters, who had not been impleaded parties in the Execution Petition. It is still further claimed that the application for setting aside the ex-parte proceedings against the petitioners – JDs was pending adjudication and the same remained undecided. The Execution Application was also claimed to be barred by limitation.

3. It is argued by learned counsel for the petitioners that the impugned orders, having been passed at their back and when their application for setting aside the *ex-parte* proceedings was pending, are not sustainable and are liable to be set-aside.

4. Counsel for the respondent, on the other hand, has urged that joining of all the L.Rs of Sohan Lal, Decree Holder – Plaintiff was not necessary when one of them was prosecuting the proceedings of execution of the decree. It is also urged that the decree was passed on a compromise between the parties and sequelly, the JDs were not even interested to prosecute the same, but when the Execution Petition has already been withdrawn as satisfied by the Decree Holder, the dispute has been raised by the JDs which plea is neither maintainable nor required to be adjudicated.

5. Perusal of the paper book reveals that a suit filed by the Decree Holder – plaintiff, Sohan Singh against the petitioners-J.Ds-defendants, was decreed as per the compromise, according to which non-payment of Rs.21,000/- by Decree Holder-plaintiff to defendant No.1 now, petitioner No.1, on or before 15.6.1992 was to result in declaration of defendant No.1 [now petitioner No.1] to be the owner of the suit land and otherwise the plaintiff was to continue to be in possession. Payment was made by the plaintiff – Sohan Singh, resulting in declaration of his possession over of the suit land.

6. In Execution Petition, preferred by the Decree Holder, the JDs were proceeded against *ex-parte* on 18.1.2010 and warrant of possession was issued for 19.4.2010.

7. In the meanwhile, an application [Annexure P/3] was filed on 6.4.2010 by the J.Ds. for setting-aside *ex-parte* proceedings against them. On this application, notice was issued to the respondent for 19.4.2010. What to talk of deciding this application of the JDs for setting aside the *ex-parte* proceedings against them, without even taking notice of the same, on the date fixed i.e., 19.4.2010, the Execution Petition was dismissed as satisfied at the back of J.Ds., who had already appeared on 6.4.2010 and had made application [Annexure P/3], as already mentioned above, for

setting aside the *ex-parte* proceedings.

8. It is abundantly clear that order dated 19.4.2010, passed at the back of the JDs, when their application dated 6.4.2010 [Annexure P/3] for setting aside *ex-parte* proceedings against them was pending adjudication, is neither correct nor legally valid. When the JDs have already appeared on 6.4.2010 and notice of their application for setting aside *ex-parte* proceedings against them had already been issued for 19.4.2010, there was no occasion for the Court below to ignore their presence while passing the impugned order of 19.4.2010.

9. So far as the objection of JDs regarding prosecution of the Execution Petition by only one of the LRs of Sohan Singh is concerned, there is no merit in it because one of the several L.Rs. or beneficiaries of the decree can legally go ahead with execution of the decree. Other objections taken here in the petition would be available for arguments to the JDs only in the eventuality of success of their application for setting-aside *ex-parte* proceedings against them and not otherwise.

10. Sequelly, order dated 19.4.2010 [Annexure P/4] is set aside with a direction to the Executing Court, i.e., Civil Judge [Junior Division], Batala to decide the application dated 6.3.2010 [Annexure P/3] of the JDs, for which notice had been issued for 19.4.2010 as the said application had remained undecided after revival of the Execution Application. Parties/their counsel are directed to appear before the Executing Court on 23.03.2015 and the said Court would proceed further with the matter, in accordance with law. The entire matter would be decided within three months from the date of receipt of copy of this order.

11. Disposed of in the above terms.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

February 21st, 2015
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