

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2378 of 2014 (O&M)
Date of decision: 19.03.2015

Ram Dhari

... Petitioner

versus

Kartar Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Avninder Kumar Kalsy, Advocate for the petitioner.

None for the respondents.

K.Kannan, J.

The petitioner is the decree holder whose petition for execution is obstructed by judgment debtor's brother who pleads that he holds a sale in respect of very same property from the judgment debtor and that a sale was pursuant to an oral agreement in point of time to the plaintiff's agreement dated 22.12.2004. He is, therefore, to place his right under the sale as one arising by an anterior agreement and the sale must be taken to be pursuant to such an anterior agreement. The court has framed the issue on the objection raised and the decree holder is before this Court in revision.

Learned counsel would argue that the person who is causing obstruction is the brother of the judgment debtor and his own sale deed was said to have been written on 22.03.2006 when the plaintiff suit was instituted on 10.03.2006. Since the purchase subsequent to the suit for specific performance, the objection cannot be entertained by the Court and the Court has no reason to set the case for any trial on issues. On the other hand, the further process in execution must proceed after rejecting the objection taken by the judgment

debtor's brother. The counsel would refer me to a decision of this Court in Bikram Singh Vs. Surjit Singh, 2004 (3) PLR 129, in support of this contention that such an objection cannot be entertained.

I have gone through the judgment referred to by the counsel. It was also a case for specific performance which had been decreed and an objection had been taken by the judgment debtor himself that it is for residential use and exempted under Section 60 (I) (ccc) of the CPC. The objection had been taken by the sons of the judgment debtor and the Court said that objection must be taken as frivolous and it is not necessary for the Court to even frame an issue to grant the opportunity to the parties to lead evidence.

I will take this judgment to refer to an assessment made by this Court that there was no triable issue in the case where the father had suffered a decree and was setting up his sons to cause an obstruction regarding the attachment and sale by resort to Section 60 (I) (ccc) of the CPC. It was not even a case of attachment and sale, which could have been objected but it was a case for decree of specific performance. There is no law that prohibits a person from entering into an agreement of sale of residential houses, while there is a protection against the attachment of such a residential property. The Court was, therefore, finding that an objection regarding executability of the decree by resorting to provisions of CPC was simply unavailable for the Court to be adjudicating on.

This case presents a different situation. The person that causes an objection is a 3rd party and claims a rival sale from the judgment debtor. The obstruction of what is required to be adjudicated in proceedings under Section 21, 97 to 99 carry an important exception through Order 21 Rule 102 CPC to bar *pendente lite* transactions to be adjudicated. If the obstruction is, therefore, brought by the 3rd party through a sale during the pendency of the suit, the Court is not required to make an adjudication.

If that right is however, sourced to an earlier agreement and

set up in the obstruction petition to the plaintiff's own agreement dated 22.12.2004, the Court is required to examine whether there existed any oral agreement of sale in the manner contended by the 3rd party objector. Learned counsel says that there can be no validity to the oral agreement against written agreement. There is no requirement in law that agreement must be written in the first place. All that is necessary for a contract of sale is an offer and acceptance, the foundational basis for any contract. The decree holder may be tempted to say that an obstruction caused by the judgment debtor's brother ought to be collusive, but judicial approach cannot go on gut feeling or hunches. They must be based on legal reasoning. It shall be surely possible for the Court below to examine whether there was any oral agreement. If there was none, or if any such evidence is given and the Court is not satisfied, the Court may stop proceedings and proceed to apply under Order 21 Rule 102 CPC and throw out the objection by the 3rd party and carry out a further process in execution.

With these observations, the civil revision petition is disposed of.

(K.KANNAN)
JUDGE

19.03.2015
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