

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 2717 of 2015

Date of Decision: April 23, 2015

Mankaran Singh

.....Petitioner

Vs.

Raghubir Singh and ors.

.....Respondents

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

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Present:- Mr. Inderjit Sharma, Advocate
for the petitioner.

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M.M.S. BEDI, J.

This order will dispose of a petition under Article 227 of the Constitution of India filed by the objector- petitioner against the order dated February 11, 2015 passed by Civil Judge (Junior Division), Gurdaspur in execution proceedings, dismissing the objections filed by one Gurdial Singh predecessor-in-interest of the petitioner.

Brief facts relevant for the decision of the present case are that plaintiff- respondents No.1 and 2 had filed a suit for possession of the suit land on the ground that they had purchased the same from Harjiwan Singh – defendant No.2 vide sale deed dated February 24, 1995 and that defendant

No.1 Gurdial Singh was in cultivating possession of the same as licensee. He claimed that he was authorized to manage the property on behalf of defendant No.2 who colluded with the plaintiffs and got the documents forged. The suit of plaintiff- respondents No.1 and 2 was decreed vide judgment and decree dated December 7, 2001. The predecessor-in-interest of the petitioner, namely, Gurdial Singh-defendant No.1 filed appeal in the Court of Additional District Judge, Gurdaspur but it was dismissed on September 3, 2009. Plaintiff- respondents No.1 and 2 filed an execution application titled Raghbir Singh and anr. Vs. Gurdial Singh and anr., on the basis of the above said judgment and decree. The predecessor-in-interest of petitioner judgment debtor Gurdial Singh filed objections under Section 47 CPC to the execution proceedings contending that the execution application was not maintainable as the property in dispute was joint and coparcenary property belonging to the fore-fathers and any alienation of any specific khasra number alleged to have been made in favour of decree holder was not binding on the ownership rights of Gurdial Singh.

The objection petition filed by Gurdial Singh was resisted by the decree holder on the ground that the objections were not maintainable as these have already been decided by way of judgment which was under execution. The Executing Court has dismissed the objections vide impugned order on the ground that all the objections which have been raised by judgment debtor No.1 through legal representatives regarding status of the suit property being ancestral and coparcenary stood already decided in the

main judgment and the objections were nothing but a delaying tactic to obstruct the execution.

I have heard learned counsel for the petitioner and with his assistance carefully gone through the record. It is apparent from the judgment passed by Civil Judge (Junior Division), Gurdaspur in case Raghbir Singh and Kanwalpal Singh Vs. Gurdial Singh and Harjiwan Singh, that suit was contested only by Gurdial Singh whereas Harjiwan Singh was ex-parte, though in the pleadings, defendant No.1 had taken up a plea that Harjiwan Singh, defendant No.2 became owner of the suit land by way of adverse possession. Issue No.2 was decided alongwith other issues and it was held that defendant No.2 was not the owner of the property rather Raghbir Singh and Kanwalpal Singh the plaintiffs have become the owner of the property. Suit of plaintiffs Raghbir Singh and Kanwalpal Singh was decreed on the basis of ownership. Gurdial Singh had filed appeal whereas his co-defendant Harjiwan Singh being ex-parte before the trial Court was impleaded as proforma respondent. The plea that the petitioner is owner of the property and is not bound by the decree for possession passed in favour of Raghbir Singh and Kanwalpal Singh was available to the predecessor-in-interest of the petitioner in the civil suit. The petitioner- objector thus cannot be permitted to raise the same plea which has already been rejected by the Civil Court in appeal too. The objections raised by the petitioner are not maintainable as such these are rightly dismissed by the Executing Court. Harjiwan Singh, defendant No.2, though has filed an application for setting

aside the ex-parte decree dated December 7, 2001 but the said fact will not, in any manner, effect the execution of the decree in favour of plaintiff-respondents No.1 and 2. It will always be open to defendant No.2 to make an attempt to seek any such relief in proceedings under Order 9 Rule 13 CPC but so far as the objections of the petitioner in the capacity as successor-in-interest of Gurdial Singh are concerned, the objections are not sustainable. No ground is made out for interference in the impugned order.

Dismissed.

April 23, 2015
sanjay

(M.M.S.BEDI)
JUDGE