

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

CR 2870 of 2015

Date of Decision: July 17, 2015

Mangal Singh and others

.....Petitioners

Vs.

Pargat Singh and another

.....Respondents

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

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**Present:- Ms. Kulwant Kaur, Advocate
for the petitioners.**

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

This is a revision petition against dismissal of the third party objections by the Executing Court. Respondent No.1 Pargat Singh had filed a suit for specific performance of an agreement of sale dated February 4, 2006 against respondent No.2 Kashmir Singh. The said suit was instituted in the year 2006 and was decreed on October 1, 2010. The petitioners claim that they had acquired right in the property on the basis of sale deed dated July 6, 2009. In order to claim a preferential right in the property the petitioners claim that they acquired interest in the property on the basis of

agreement of sale which was prior to February 4, 2006. The objections filed by the petitioners have been dismissed vide impugned order.

Counsel for the petitioners was directed to address arguments regarding the maintainability of the revision petition on account of availability of alternative remedy of appeal in view of judgment of Hon'ble Apex Court in **Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal**, AIR 1997 SC 856 and **Gurram Seetharam Reddy Vs. Gunti Yashoda and another**, AIR 2005 (AP) 95 (FB).

Counsel for the petitioners has submitted that since objections have not been adjudicated upon, the appeal would not be maintainable against the impugned order in the light of judgments in **Ram Kumar Tiwari and others Vs. Deenanath and others**, AIR 2002 (Chhattisgarh) 1; **N.S.S.Narayan Sarma Vs. M/s Goldstone Exports P. Ltd.**, 2002 (1) RCR (Civil) 752 and **Shrenath Vs. Rajesh**, AIR 1998 (SC) 1827.

The short question which is required to be determined in the present case is whether in the circumstances of the present case, the adjudication of the objections rejected by the trial Court vide impugned order dated July 7, 2014, annexure P-9, has to be considered by an appeal as per Order 21 Rule 101 CPC or it should be adjudicated by this Court in the exercise of revisional jurisdiction considering the order annexure P-9 as order not adjudicating the objections.

Taking into consideration the objection raised by the petitioners that they had acquired right, title and interest in the property in dispute on

the basis of an agreement of sale prior to the agreement of sale dated February 4, 2006 executed in favour of the plaintiff- respondent Pargat Singh and on the basis of sale deed dated July 6, 2009 executed prior to the decree dated October 1, 2010 passed in favour of Pargat Singh and possession having been delivered to them, they have got a right independent to the judgment debtor and that they are not claiming through or under the judgment debtor, they cannot be dispossessed in execution of the decree. It is claimed by the petitioners that objection under Order 21 Rules 99 and 100 CPC filed by them required the Executing Court to determine their right in independent capacity which has not been done by the Executing Court.

Counsel for the objector/ petitioners submitted that as per judgment in **H. Seshadra Vs. K.R. Natarajan and another**, 2003 (1) RCR (Rent) 604, the Executing Court was required to consider whether the petitioner claimed a right independent of the judgment debtor or not. She relied upon **Shreenath Vs. Rajesh**, (supra) in support of the contention that when a third person is in possession of property and claiming title in his own capacity, the Executing Court has to adjudicate the objections finally under Rule 101 CPC and he has not to file a fresh suit claiming independent title and would be entitled to file objections resisting the execution of the decree being “any person”, having right in the property on his own as per the judgment of **Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and another**, (1997) 3 SCC 694. She also relied on **Silverline Forum Pvt. Ltd. Vs. Rajiv Trust**, 1998 (2) PLR 519 to contend that it is the Executing Court

who has to decide whether the resistor or obstructor is a person bound by the decree and he refuses to vacate the property.

I have heard learned counsel for the petitioners and I am of the opinion that it is well settled principle of law that a third party apprehending dispossession can file an objection under Order 21 Rule 97 (1) CPC. It is also undisputed that adjudication of claim by the Executing Court would be treated as a decree and all questions which arise between the parties i.e. objector and the decree holder would fall under the adjudication under Order 21 Rule 101 CPC which provides that all questions including right, title or interest in the property arising between them would be decided by the Executing Court. Order 21 Rule 103 CPC provides that any person claiming title to the property in his possession obstructing attempt by the decree holder to dispossess him from the property conforming subject matter of the execution petition, offering obstruction would be entitled to get his claim adjudicated under Order 21 rule 101 CPC. The order passed by the Executing Court under Order 21 Rule 103 CPC is to be treated as a decree and such an adjudication is appealable.

A similar question came up before Full Bench of Andhra Pradesh High Court in **Gurram Seetharam Reddy's** case (supra) wherein it was laid down that orders passed under Order 21 Rules 58, 98 or 100 CPC are appealable orders under Section 96 CPC. Following the said judgment, this Court in **M/s Sunil Auto Service Vs. Parikshant Suri and others**, 2011 (1) RCR (Rent) 452 held that an appeal lies against such an order

passed by the Executing Court. In **Jagroop Singh Vs. Boria Khan**, 2002 (4) RCR (Civil) 336, it was held that when an application has been adjudicated upon under Order 21 Rule 99 or Rule 100 CPC, such an order of adjudication have the force of decree appealable under Rule 103 CPC. It was held that revision petition will not be maintainable against such an appealable order.

The judgment of **N.S.S. Narayana Sarma's** case (supra) cited by learned counsel for the petitioners is not relevant for the purpose of adjudication of the controversy whether the impugned order is appealable but the said judgment holds that all questions raised by the objector in application under Order 21 Rule 97 CPC are to be determined by the Executing Court by passing an appropriate order.

So far as the maintainability of appeal is concerned, in **Brahmdeo Chaudhary's** case (supra) followed in judgment of **Jaswinder Pal and another Vs. Vikas Kumar and others**, CR 1435 of 2015, decided on March 10, 2015; **M/s Sunil Auto Service** case (supra), and Full Bench judgment of Andhra Pradesh High Court in **Gurram Seetharam Reddy's** case (supra), this Court is of the opinion that the petitioners have got an alternative remedy to file an appeal against the impugned order dismissing their objections. The plea that Executing Court has not applied his judicious mind on the objections or the said Court has not treated the objections in right perspective can be raised before the Appellate Court.

This revision petition is dismissed being not maintainable relegating the petitioners to avail alternative remedy of filing appeal. In case appeal is filed within 15 days after the receipt of a certified copy of the order with an application for condonation of delay, the same would be entertained and decided expeditiously.

July 17, 2015
sanjay

(M.M.S.BEDI)
JUDGE