

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

Civil Revision No. 3269 of 2015 (O&M)

Date of decision : 28.5.2015

Jasmer Singh and others

... Petitioners

VS

Smt. Hamir Kaur and others

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Adarsh Jain, Advocate, for the petitioners.

Rajesh Bindal, J.

1. Challenge in the present petition is to the order dated 6.4.2015 passed by the learned Civil Judge (Junior Division), Ambala City whereby the objections filed by the petitioners in execution of the judgment and decree dated 13.5.2010, were dismissed.

2. Briefly the facts as are available on record are that respondent no. 1 – Smt. Hamir Kaur filed a suit for declaration challenging the sale-deed dated 28.7.1986 executed in favour of Amrik Singh (since deceased) for 18 kanals 10 marlas of land and subsequent judgment and decree dated 15.10.1987 suffered by Amrik Singh (since deceased) in favour of his wife Harbhajan Kaur- respondent no.3, to be null and void. The suit filed by Smt. Hamir Kaur was dismissed by the trial court vide judgment and decree dated 1.2.2008, however, in appeal, the judgment and decree of the trial court was reversed and the suit filed by Smt. Hamir Kaur was decreed declaring the sale-deed as well as earlier judgment and decree to be null and void. The judgment and decree of the learned Lower Appellate Court attained finality.

3. In the execution of the decree filed by Smt. Hamir Kaur, the petitioners filed objections claiming that they had purchased the property vide two sale-deeds dated 24.3.2004 and 12.4.2004 from Surinder Singh, who had purchased the property vide two sale deeds dated 12.6.2000 and 20.7.2001 from Harbhajan Kaur. Harbhajan Kaur had got right, title and

interest in the property in terms of the decree of the civil court dated 15.10.1987, which was set aside vide decree under execution. The objections were filed as the petitioners were bonafide purchasers for consideration. The learned court below having dismissed the objections vide order dated 6.4.2015, the same has been impugned in the present petition.

4. Learned counsel for the petitioners submitted that the objections having been filed by the petitioners being third party, those were required to be adjudicated upon by framing issues as the order passed therein is a deemed decree. A separate suit for determination of rights between the parties was not maintainable. The parties to the litigation were well in knowledge of the sale of part of the property in favour of the petitioners, but did not take any steps either to implead them or to challenge the sale-deeds. On the issue as to whether Civil Revision would be appropriate remedy for challenging the order passed by the learned Court below dismissing third party objections, the learned counsel for the petitioners submitted that once the court below has failed to deal with the objections and frame issues, permitting the parties to lead evidence, it amounts to failure to exercise jurisdiction and in those circumstances, a revision petition before this Court is maintainable. In support of his plea, reliance was placed upon judgments of Hon'ble the Supreme Court in Brahmdeo Chaudhary vs Rishikesh Prasad Jaiswal and another (1997) 3 SCC 694; Maya Devi vs Lalta Prasad 2014 (2) RCR (Civil) 193, and Sameer Singh and another vs Abdul Rab and others (2015) 1 SCC 379.

5. Heard learned counsel for the petitioners and perused the paper book.

6. The facts as have come on record are that respondent no. 1 filed the suit challenging sale-deed dated 28.7.1986 executed in favour of Amrik Singh (since deceased) and subsequent judgment and decree dated 15.10.1987 suffered by Amrik Singh (since deceased) in favour of his wife, Harbhajan Kaur. The suit was filed on 22.5.1998, which was dismissed by the trial court vide judgment and decree dated 1.2.2008. Smt. Hamir Kaur preferred appeal, which was allowed by the learned Additional District Judge vide judgment and decree dated 13.5.2010. The same attained finality as RSA No. 4432 of 2010 Sukhwinder Singh and another vs Smt. Hamir

Kaur and others impugning the judgment and decree dated 13.5.2010 was dismissed on 26.11.2010. The present petitioners are buyers of the property from Surinder Singh, who had purchased the same from Harbhajan Kaur. All the sale transactions took place during the pendency of the suit filed by Smt. Hamir Kaur. In the execution filed by Smt. Hamir Kaur, the petitioners filed third party objections, which have been dismissed by the learned court below.

7. Order XXI Rule 97 CPC provides that a third party in possession of a property claiming independent right on the property which is subject matter of execution can resist the execution of the decree by filing objections.

8. Order XXI Rule 99 CPC enables a person, other than the judgment debtor, to file an application complaining his dispossession.

9. Order XXI Rule 101 CPC provides that all questions including questions relating to right, title and interest in the property arising between the parties to a proceeding on an application filed under Rule 97 or Rule 99 of Order XXI CPC shall be determined by the Court dealing with such application. No separate suit shall lie for the purpose.

10. Order XXI Rules 98 and 100 CPC provides for order to be passed on applications under Rules 97 and 99 CPC, respectively, for determination of the question referred to in rule 101 CPC.

11. Order XXI Rule 103 CPC provides that adjudication on an application under Order XXI Rule 98 or Rule 100 CPC shall have same force and be subject to same conditions as to an appeal or otherwise as if it is a decree.

12. In terms of Section 96 CPC, an appeal lies from a decree passed by any court exercising the original jurisdiction to the Court authorised to hear appeal from the decision of such court.

13. An appeal from the judgment and decree of the Civil Judge is maintainable before the District Judge.

14. The procedure as envisaged in Order XXI Rules 98 and 99 CPC was considered by Hon'ble the Supreme Court in Brahmdeo Chaudhary's case (supra), and it was opined as under:-

“9... a stranger to the decree who claims an independent

right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI, Rule 99. Order XXI, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him.”

15. Order XXI Rule 101 CPC clearly provides that an order passed by the Court deciding third party objection is a deemed decree, hence, subject to provisions of appeal. The petitioners have impugned the order passed by the court below dismissing his objections by filing the present petition under Article 227 of the Constitution of India by passing the remedy of appeal. In support of his plea, learned counsel for the petitioners had primarily referred to judgment of Hon'ble the Supreme Court in Sameer Singh's case (supra). However, the same is not applicable in the facts of the case in hand.

16. In the aforesaid judgment, the executing Court declined to adjudicate the objections opining that it lacked jurisdiction and it had become functus officio after passing of the decree in execution. The order passed under those circumstances was held to be not a decree, hence, the jurisdiction of the High Court under Article 227 of the Constitution of India was permitted to be invoked. It was a case where the Court had failed to exercise jurisdiction vested in it. In the case in hand, the Court had not declined to adjudicate the objections filed by the petitioners, rather their grievance is only that issues had not been framed.

17. In Brahmdeo Chaudhary's case (supra), the executing court had refused to adjudicate upon the objections filed by the third party, hence, it was a case of failure to exercise jurisdiction.

18. Judgment in Maya Devi 's case (supra), is also not applicable as in that case the issue was considered on merits after dismissal of objections filed by the third party. He preferred Execution First Appeal and thereafter the matter was examined by Hon'ble the Supreme Court.

19. This Court in Madhubala Soni vs Pardeep Kumar Soni and others 2015(1) Law Herald 522, opined that in all the execution proceedings issues have not to be framed but proper application of mind has to be there while deciding the objections.

20. In the case in hand, after the warrants of possession were issued, the petitioners filed objections raising the plea that they are bonafide purchasers. No doubt, the learned court below has not framed the issues as is the grievance being raised by learned counsel for the petitioners, however, the case set up by them namely of bonafide purchasers has been dealt with in detail while referring to various judgments. Hence, it could not be said that the learned Court below had either refused or failed to exercise the jurisdiction vested in it or there is no application of mind. It is another matter that the petitioners are aggrieved against the order passed. The grievance against the order on merits is an aspect different altogether. For this, the appropriate remedy of appeal cannot be bye-passed and jurisdiction of this court in its supervisory capacity cannot be invoked.

21. For the reasons mentioned above, the present petition is dismissed as not maintainable. However, the same will not debar the

petitioners from availing their appropriate remedy against the impugned order in accordance with law. This Court has not expressed any opinion on merits of the case.

28.5.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)