

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 6908 of 2013 [O&M]
Date of Decision : February 13th , 2015

Ram Pal Sharma

.... Petitioner

Versus

Uttam Kaur and others

.... Respondents

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

Present Mr. G.S.Punia, Senior Advocate,
with Ms. Mandeep Kaur Kahlon
for the petitioners.

None for respondents No. 1 to 4.

Mr. Om Pal Sharma, Advocate,
for respondent No. 5.

Mr. J.S.Lali, Advocate
for respondent No.6.

Dr. BHARAT BHUSHAN PARSOON, J.

Since no one appeared on behalf of respondents No.1 to 4, vide order dated 6.1.2015 passed by this Court, they were proceeded against *ex parte*.

2. A decree dated 26.3.1998 [Annexure P/2] was sought to be executed by the Decree Holder [D.H.] wherein with the intervention of the Executing Court, sale deed dated 24.2.2011 was executed in favour of D.H., petitioner herein. Warrants of possession were issued. The bailiff concerned had reported about the resistance caused by the Judgment Debtors in execution of the decree for possession. Consequently, police help for execution of the warrants of possession was ordered.

3. It was at this stage that an Objection Petition came from the

Objector/respondent No.5 claiming himself to be a vendee from JDs, respondent Nos. 1 to 4 herein. For deciding the said objection petition, vide order dated 19.10.2013 [Annexure P/1], the Executing Court had framed the following issues and has fixed the case for evidence of the Objector.

1. Whether the Decree Holders are having no concern with the property in question? OPD
2. Whether the Decree Holders are having no right, title or interest qua the property in question? OPD
3. Whether the Decree Holders threatened the Objector to dispossess from suit property illegally with the help of friends? OPD
4. Whether the Objection Petition is not maintainable? OPDH
5. Whether the appeal, pending in the Court of Sh. A.S.Virk, Ld. ADJ, Ludhiana, is having any effect upon the interest of DH? OPDH
6. Relief.”

4. This order of 19.10.2013 is under challenge in this revision petition filed by the decree holder, petitioner herein, invoking supervisory powers of this Court under Article 227 of the Constitution of India.

5. It is claimed that a reading of the impugned order [Annexure P/1] reveals that there is no application of mind by the Executing Court and the issues were framed in routine. It is further claimed that the Objector-vendee having purchased the property from J.Ds, respondents No. 1 to 4 herein, who had been left with no right title or interest in the land as the sale deed dated 24.2.2011 had already been executed in favour of the Decree Holder, could not have any title.

6. Learned counsel for the Objector, respondent No.5 herein, on the other hand, has claimed that he being a third party and not privy to the decree is entitled to get adjudication of his Objection Petition from the Executing Court and it is only possible after evidence is led by the parties. Validity and legality of the impugned order is asserted.

7. Respondent No. 6 has also resisted to this petition, but had not much in his defence to offer.

8. It is important to note that the decree under execution is pending since 26.03.1998. The Execution Application, earlier preferred, had ended in execution of sale deed in favour of the Decree Holder on 24.02.2011, but possession could not be delivered. It is the second round of litigation which the Decree Holder is taking, wherein possession is sought to be delivered to him from the JDs.

9. Contention of learned counsel for the contesting respondents that nothing wrong was done by the Executing Court in framing the issues in deciding the Objection Petition, as it was the only course available with the Executing Court, is not correct. No doubt, third party objections require adjudication independently, but if the Objection Petition, on the face of it, is so frivolous and vexatious, the Executing Court is not bound to frame issues for adjudication of the same.

10. At this stage, reference may be made to the authority of Hon`ble Supreme Court of India in **Satyawati Vs. Rajinder Singh and another 2013 [7] SCALE 371**, wherein, referring to the observations of Hon`ble Privy Council made in 1872 regarding difficulties faced by a Decree Holder in execution of a decree, the Hon`ble Apex Court in paras No. 2 and 3 of this judgment had discussed the plight of a Decree Holder, who was facing problem in execution of the decree as under:-

“2. In relation to the difficulties faced by a decree holder in execution of the decree, in 1872, the Privy Council had observed that

“..... the difficulties of a litigant in India begin when he has obtained a Decree....”.

3. Even today, in 2013, the position has not been improved and still the decree holder faces the same problem which was being faced in the past. We are concerned with the case of the appellant-plaintiff who had succeeded in Civil Appeal No.89 of 1993 in the Court of District Judge, Faridabad on 19th January, 1996. Decree was drawn in pursuance of the aforesaid judgment but till today, the appellant-plaintiff is not in a position to get fruits of his success.”

11. In para No. 17 of this judgment, it was further observed as under:-

“17. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.”

12, Referring to the proverbial observation of Hon`ble Privy Council, Hon`ble Supreme Court in **Shub Karan Bubna alias Shub Karan Prasad Bubna Vs. Sita Saran Bubna and Ors [(2009) 9 SCC 689]**, made the following observations:-

“The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.”

13. In **Babu Lal Vs. Hazari Lal Kishori Lal and others [1982] 1 SCC 525**, the Hon`ble Supreme Court in Para No. 29 of this judgment had observed as under:-

“Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objection.....”

14. It is evident from the law laid down in these authorities that the Courts are to alleviate the miseries of Decree Holder and are not to compound the same.

15. Reading of the impugned order reveals that learned Executing Court without application of mind has framed the issues, reproduced earlier. Had the Executing Court gone into the details of the matter, it is clear that there was no need to frame these issues. Apparently, title in the property is claimed by the Objector vide sale deed dated 8.1.2013 from the Judgment Debtors No. 1 to 4, when the vendors had left with no right title or interest in the property as the sale deed in favour of the Decree Holder

had already been executed through the intervention of the Court on 24.02.2011 i.e., almost 23 months earlier divesting the J.Ds. from all rights, title or interest in the suit property. In short, J.Ds. were left with absolutely no right, title or interest in the suit property. In this back-drop, the Objection Petition is nothing but a contrivance of the JDs in collaboration with the Objectors to further delay and dilate the proceedings of execution of the decree.

16. In the face of these facts, the Objection Petition was straightway required to be decided and did not call for any evidence to support and sustain the same. The impugned order, Annexure P/1, instead of alleviating the sufferings and miseries of the Decree Holder, compounds those manifold and in addition perceptibly shows that while passing the impugned order, the adjudication of the Objection Petition did not engage the attention of the Executing Court to the extent required and apparently it is rather complete lack of application of mind.

17. Sequelly, the revision petition is accepted and the impugned order dated 19.10.2013 [Annexure P/1] is set-aside. Parties to appear before the Executing Court on 26.02.2015.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

February 13th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?