

112

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.8118 of 2015

Date of Decision: 02.12.2015

Nurudin and others

.....Petitioners

Vs

Dinesh Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjeev Kumar Bawa, Advocate
for the petitioners.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. This revision petition has been filed against the order dated 08.10.2015 passed by Civil Judge (Sr. Divn.) Mewat, whereby application by the judgment-debtors No.1, 3, 4 and 6 for dismissing the execution petition has been dismissed.

[2]. Plaintiffs/petitioners filed suit for declaration and permanent injunction against the defendants No.1 to 5 claiming that the plaintiffs and proforma defendants are owners in possession of suit land being in possession for the last 30 years as *Basrah Malkan Bawaja Tawsabar Malkiat Khud* as the suit land was sold away by the father of the defendants for a sale

consideration of Rs.2500/-. In alternate plaintiffs and proforma defendants sought decree that they became owners by adverse possession.

[3]. The suit was contested. Possession of the plaintiffs was denied. Defendants submitted that their common ancestor Dayal Chand had agreed to sell the land measuring 36 *Kanals* in favour of one Badlu predecessor-in-interest of the plaintiffs along with one Ishab and that agreement was reduced into writing on 10.09.1963 for a sale consideration of Rs.2500/-. That agreement was scribed by one Shiv Dayal, deed writer and was thumb marked by the parties. One of the vendee under that agreement to sell namely Ishab got the sale deed registered in his favour for the land comprised in Rect. No.50/21 and Rect. No.49/25. But the predecessor-in-interest of the plaintiffs namely Badlu did not comply with his part of obligation arising out of agreement to sell dated 10.09.1963 and, therefore, agreement to sell did not mature. Defendants filed counter-claim for a decree of possession.

[4]. The plaintiffs filed replication to the written statement viz-a-viz., Counter-claim and denied that the defendants are owners in possession of the suit property.

[5]. Trial Court dismissed the suit vide judgment and decree dated 15.03.2008 and also dismissed the counter-claim of the

defendants, however held that the plaintiffs and proforma defendants are in possession of the suit property.

[6]. Against the judgment and decree dated 15.03.2008, plaintiffs and proforma defendants preferred appeal and defendants also filed appeal before the lower Appellate Court.

[7]. The lower Appellate Court vide judgment and decree dated 28.02.2009, dismissed the appeal of the plaintiffs and proforma defendants, however allowed the appeal of the defendants against the decision vide which counter-claim was dismissed. Consequently, decree for possession of the suit property was granted in favour of the defendants.

[8]. In the appeal preferred by the defendants No.4 and 5 namely Krishna daughter of Dayal Chand and Bihari son of Dayal Chand were represented by one Kamru, who alleged himself to be general power of attorney of defendants No.4 and 5.

[9]. In the execution of judgment and decree dated 28.02.2009 passed by the lower Appellate Court, the execution was filed by defendants No.4 and 5 through their attorney Kamru. Signatures of Kamru finds mention on the execution petition as well as on the power of attorney. The plaintiffs/judgment-debtors in counter-claim filed petition under Section 47 CPC that the general power of attorney of

defendants No.4 and 5 is a forged and bogus document and the said general power of attorney has become infructuous on account of death of most of the defendants.

[10]. The application filed by the plaintiffs/judgment-debtors of counter-claim for dismissal of the execution petition was dismissed by the executing Court vide the impugned order dated 08.10.2015.

[11]. Learned counsel for the petitioners has contended that the present execution has been filed by the general power of attorney executed by the decree-holder namely Dinesh etc. Most of the decree-holders have already died, therefore, general power of attorney has become infructuous and cannot be enforced, therefore, execution is liable to be dismissed.

[12]. Learned counsel further contends that in terms of Section 47 CPC, first of all the objection of the judgment-debtors has to be ascertained in the context of general power of attorney whether he has died or not? Secondly under Order 21 Rule 35 CPC, possession be given to the decree-holder or his authorised representatives thereafter. In the execution, no general power of attorney has been pleaded on record and the objections raised by the judgment-debtors are interim objections and the main objections are still pending.

[13]. On the other hand, the Court has found that factum of

general power of attorney was very much within the knowledge of the judgment-debtors. They never raised any objection in the past. The execution petition cannot be dismissed even if there are no signatures on the petition. The reference was made to ***Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006(1) Civil Court Cases 416.***

[14]. The trial Court has found that general power of attorney holder has been prosecuting the proceedings from the very beginning and the judgment-debtors have not raised any objection in the past. The objection raised at this stage is only intended to delay the proceedings. The decree-holder cannot be deprived of the fruits of the decree. The Objection petition filed by the judgment-debtors is vague in terms of death of executant. Only bald allegations has been made that some of the executants of the general power of attorney have died. There is no objection that defendants No.4 and 5 have died, who were pursuing the execution in question, rather in terms of Annexure P-3 i.e. objection petition filed under Section 47 of CPC, there is no even an averment with regard to date of death of defendants No.4 and 5.

[15]. It is settled principle of law in terms of Order 3 Rule 4 CPC that once Attorney has been engaged, the said Attorney would remain in operation unless and until the same is

determined with the leave of the Court. The execution filed before the executing Court on behalf of defendants No.4 and 5 has been signed by the Attorney, whose authority was never determined by the executants themselves or by the leave of the Court at any point of time.

[16]. Looking to the entirety of the facts and circumstances, this Court finds that there is no infirmity in the impugned order and this revision petition is accordingly dismissed.

December 02, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**