

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

Civil Revision No.8686 of 2015

Date of Decision: 19.12.2015

Baljinder Singh

.....Petitioner

Vs

Rajinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kanwal Goyal, Advocate and
Mr. Ishan Gupta, Advocate
for the petitioner.

Mr. Harsh Aggarwal, Advocate
for respondent No.3.

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]. Petitioner has assailed order dated 07.12.2015 passed by Additional District Judge, Sangrur, whereby application for stay of execution proceedings and issuance of warrants of possession was dismissed.

[2]. Petitioner alleged that the property in question belongs to Dharamshala, village Sanghreri in which petitioner along with other proforma respondents and villagers are in actual physical

possession being owners. Earlier suit was dismissed on 29.02.1960 being not maintainable for want of impleadment of interested persons of Dharamshala as party to the suit.

[3]. In the present execution, order dated 26.10.2015 was passed by Additional Civil judge (Sr. Divn.) Sangrur vide which objections under Order 21 Rule 97 CPC filed by 22 persons were dismissed without framing issues and without following proper procedures. Against the dismissal of the objections, the appeal was filed before the Additional District Judge on the ground that appeal is continuation of the suit proceedings/objections filed at the feeder level.

[4]. Plaintiffs have filed a suit for possession of land which was mutated in the name of Dharamshala. The mutation was contested by the plaintiffs which was sanctioned in the name of Dharamshala on the basis of gift. The property was gifted in the year 1949 (2001 BK). The revenue Court established that Dharamshala is in possession since the date of mutation. Plaintiffs knew about the factum of gift and sanctioning of mutation in the name of Dharamshala and, therefore, simpliciter suit for possession was not maintainable. Once the factum of Dharamshala to be owner in possession was established, therefore, it was obligated on the part of the plaintiffs to challenge the ownership and get the record of the title

corrected. Since no declaration was sought regarding the gift and the proceedings of revenue Court, therefore, the established fact in terms of proceedings of revenue Court could not be set at naught in the absence of any declaration. Simpliciter suit for possession was not maintainable.

[5]. In judgment Ex.DA there was a reference that Dharamshala is not the religious institution, therefore, all the members of the Dharamshala should have been impleaded. On that premise, District Judge, Sangrur passed the order dated 29.02.1960 vide which appeal was accepted and judgment and decree of the trial Court was set aside and plaint was ultimately rejected vide Ex.DA.

[6]. The property was given by way of gift for the benefit of the village community. All the members of the village proprietary body used to manage the property of Dharamshala. Mere impleading of Mit Singh and Sadhu Singh is not sufficient, but all the members of the Dharamshala should have been impleaded in the suit.

[7]. Petitioner alleged that it is a settled principle of law that the judgment passed without impleading necessary party is a nullity, therefore, judgment dated 15.03.1971 is not binding upon the rights of the members of the Dharamshala. Plaintiffs also claimed themselves to be members of the Dharamshala.

Simpliciter suit for possession without seeking declaration was not maintainable, therefore, judgment obtained without getting declaration has no legal effect on the rights of the objector/members of the Dharamshala.

[8]. Suit is also claimed to be time barred. Limitation for seeking declaration is only three years. Property was gifted in the year 1949 and contested mutation was sanctioned in the year 1953. Suit came to be filed only in the year 1962. The suit was totally time barred. The relief of possession has also become time barred in view of transfer of property by way of gift. Therefore, the objectors claimed that the impugned judgment and decree has no effect upon the rights of the objector and the members of the Dharamshala. Objector also claimed that they came to know about issuance of warrants of possession when the officials of Court visited the spot for taking possession. Members of Dharamshala resisted the proceedings and ultimately the objections came to be filed.

[9]. Objector and other villagers claimed themselves to be in independent possession of the property and they have their own right to retain the property in question. The objectors have claimed that reference of the gift deed has not been given in the plaint. The property was gifted in the year 1949. Sale deed was executed on 10.01.1951. Mutation was sanctioned in the year

1953 and suit was filed on 18.01.1962. Assa Singh was not in possession of the disputed land. The sale deed was executed after one year of the gift. The limitation commenced from the date of gift itself and not from the date of execution of the sale deed. Gift has not been challenged by the plaintiffs within limitation and, therefore, suit of the decree-holders was time barred.

[10]. Suit for possession filed by the plaintiffs against Mit Singh and Sadhu Singh as Manager of the Dharamshala was not maintainable in the light of Ex.DA i.e. the previous suit filed against Dharamshala through Mit Singh and the present suit was filed against Mit Singh as Manager of Dharamshala, therefore, both the parties were the same. The residents of the locality should have been impleaded, therefore, impugned judgment and decree is claimed to be not binding upon the objectors. Objectors further alleged that mere placing of power of attorney of Balwinder Singh has no effect on the rights of the objectors. The resolution has not been placed on record, nor the objectors have ever authorised said Balwinder Singh and Sukhdev Singh to appear before the Court.

[11]. Ultimately, learned counsel for the objector submits that the objections filed by the third party should have been decided after framing issues and after following proper procedure in

accordance with law.

[12]. Regarding objections taken by the appellants in the objection petition as well as in grounds of appeal and stay application, specific issues were framed in the main suit and were decided with reference to evidence by the trial Court vide judgment and decree dated 15.03.1971, which was further affirmed by the lower Appellate Court vide judgment and decree dated 10.09.1981. Thereafter even, this Court has affirmed the same findings vide judgment and decree dated 16.02.2011 in Regular Second Appeal.

[13]. The objections have already been decided on the basis of evidence by the regular Courts in hierarchy. The executing Court, thereafter has issued warrants of possession in execution. The decree-holders have faced the protracted litigation for the last more than 50 years. Even the execution is pending for the last more than 10 years. The judgment-debtors have stalled the proceedings by one reason or the other.

[14]. Firstly on 06.03.2006 Balwinder Singh judgment-debtor appeared through Sh. Yogesh Gupta, Advocate and moved an application for rendering the assistance to the Court by pointing out that execution was stayed by the High Court and case was fixed for 17.03.2006. The case was adjourned for 31.03.2006 for further proceedings. SLP is pending before the Hon'ble

Supreme Court and objections of the judgment-debtors were dismissed on 03.03.2014. Thereafter warrants of possession were ordered to be issued and on issuance of the same, the present objections came to be filed on 04.07.2014, which were dismissed by the executing Court on 26.10.2015.

[15]. It has also come on record that at the time when earlier warrants of possession were issued, then entire village consisting of 300-350 persons along with Balwinder Singh, judgment-debtor, Mewa Singh son of Hari Singh, Rajinder Singh son of Dalip Singh, Ex-Sarpanch Birdavinder Singh son of Dalip Singh and many more persons with deadly weapons along with womenfolk encircled the suit property and threatened that they will not allow the decree-holder to take possession of the property. The revenue officer reported that possession cannot be delivered without police help and thereafter District Judge, Sangrur provided police help vide order dated 02.02.2006 on the request of executing Court.

[16]. In the SLP, the Hon'ble Supreme Court substituted Manjeet Kaur Sarpanch Gram Panchayat in place of judgment-debtors and now Manjeet Kaur, Sarpanch Sarghreri vs. Rajinder Singh and others is the title of the case. Since 2012 till date, no stay has been granted by the Hon'ble Apex Court. Since Gram Panchayat has already been impleaded in the case, therefore,

Panchayat being the representative of the entire village community is representing the cause of public in pending litigation, therefore, objections in the present form have no independent legs to stand.

[17]. The Civil Suit No.13 of 1962 was filed by Rajinder Singh, Avtar Singh, Bhupinder Singh and Ranjit Kaur against Mit Singh, Sadhu Singh, Chuhan Singh, Gurdial Singh, Joginder Singh and Inder Singh for possession of agricultural land measuring 153 *Kanals* 10 *Marlas*. The said suit was decreed by the trial Court on 15.03.1971. Appeal was dismissed by the lower Appellate Court, Sangrur on 10.09.1981. RSA was also dismissed by this Court and SLP No.22025 of 2012 is pending in the Hon'ble Supreme Court.

[18]. Learned counsel for the petitioner contends that suspension of order during pendency of appeal has to be granted in normal circumstances. Learned counsel cites **Mool Chand Yadav and another vs. Raza Buland Sugar Company Limited, Rampur and othes, 1982(3) SCC 484** and **South Eastern Coalfields Ltd., vs. Gujarat Ambuja Cements Ltd., 2002(10) SCC 493** in support of his submission. In the light of facts that the objectors have lost litigation in regular Forums right upto this Court and SLP is pending in the Hon'ble Supreme Court without stay, it cannot be opined that the prayer of stay

during pendency of appeal is on regular side. Since the objectors are unsuccessful before the executing Court and they have filed appeal against the order, passed by the executing Court before Executing First Appeal, therefore, it is lawful for the objector to seek stay of the execution in the pending appeal before Execution First Appeal and not by way of separate revision petition. Since stay has been declined, therefore, the petitioner cannot seek parity in terms of remedy on regular side.

[19]. On the other hand, learned counsel for the respondents/decreed-holders cites **M/s Sunil Auto Service vs. Parikshant Suri and others, 2011(1) RCR (Rent) 452** to contend that it is not legally incumbent upon the executing Court to try every objection which appears to be frivolous and vexatious by way of following proper procedure of framing issues and allowing the parties to lead evidence. Frivolous objections are not necessarily to be decided by way of following proper procedure and the same can be rejected summarily. Learned counsel also cites **Rana Mahajan and another vs. Shri Purshottam Krishan and others, 2014(2) RCR (Civil) 331** to contend that the resistance at the instance of person having no locus should be treated to be mere attempt to delay the execution of the proceedings.

[20]. The execution was filed on 08.10.2005 and warrants of

possession were issued in the year 2006. Episode of 2006 showed that about 300-350 persons gathered on the suit land with deadly weapons and stopped Government officials from delivering the possession in favour of the decree-holders. Even the Regular Second Appeal was decided by this court on 16.02.2011, still the decree-holders have not been successful in the execution.

[21]. The warrants of possession were sought to be executed with the Police help. The present objections have been filed to stall the proceedings on the plea that the suit was beyond limitation as well as suit for possession was not maintainable. These very pleas were the basic issues before the trial Court as well as before the Appellate Court and even before this Court. All these issues were decided by the Courts in hierarchy and now these objections are nothing, but the repetition of grounds with different colour. The requirement of law in terms of Order 21 Rule 97 CPC is not that all the frivolous objections will be decided by following proper procedure.

[21]. Having considered the background, I am of the opinion that no indulgence can be granted to the petitioner in this revision petition. In considered opinion of this Court, the Additional District Judge, Sangrur has not committed any error of jurisdiction in declining the application for grant of stay of

execution proceedings and issuance of warrants of possession, keeping in view the protracted litigation for more than 50 years between the parties and the decree-holders have not been successful in getting fruits of the decree till date.

[23]. In view of aforesaid, I do not find any substance in this revision petition and the same is accordingly dismissed.

December 19, 2015

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**(RAJ MOHAN SINGH)
JUDGE**