

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 8407 of 2014 (O&M)
Date of Decision : 29.01.2015

Akashdeep Singh (minor) through Jasbir Kaur (grandmother)

....Petitioner

Versus

Harjinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

Present: Mr. Nitish Garg, Advocate
for the petitioner.

R.P. Nagrath, J.

CM No. 2230-CII of 2015

Application is allowed and judgment dated 26.05.2009 (Annexure A-6) passed by Additional Civil Judge (Senior Division), Ferozepur, is taken on record.

CR No. 8407 of 2014

The petitioner in the instant revision by invoking jurisdiction of this Court under Article 227 of the Constitution of India seeks to challenge the order dated 27.10.2014 (Annexure P-5) passed by the Additional District Judge and the order dated 27.08.2014 (Annexure P-2) of the Executing Court.

2. The Appellate Court observed that interest of the

petitioner-defendant, who was minor, was being defended through his mother. The suit was decreed and the appeal filed against the trial Court judgment was also dismissed. The objection petition was filed in the Executing Court by the minor through his grandmother. It was further observed that the petitioner was unable to support the contention that the appeal was maintainable against the order rejecting the objection petition as only revision was maintainable before the High Court.

3. The facts of the case briefly are that respondent no. 1 filed a suit for specific performance of agreement to sell dated 16.05.2002, executed by respondent no. 2 in respect of 19 kanals of the land for a consideration of ₹ 5 lacs. An amount of ₹ 4,60,000/- was paid towards part of the sale consideration at the time of execution of the agreement and rest of the amount was to be paid at the time of execution of the sale deed. The target date for execution of the sale deed was 15.11.2002. However, respondent no. 2-defendant no. 1 executed the sale deed dated 10.10.2002 in favour of his sons i.e. defendants no. 2 to 4 in the suit. All the three sons of respondent no. 2 died during pendency of the suit and their legal representatives were brought on record and the petitioner is one of the legal representative of Balwinder Singh son of Gurcharan Singh, the vendor. The trial Court vide judgment dated 26.05.2009 (Annexure A-6) granted decree for alternative relief for recovery of ₹ 4,60,000/- alongwith interest. Appeal was filed by respondent no. 2-defendant no. 1 against the

decree passed by the trial Court and plaintiff-respondent no. 1 also filed cross-objections. The Appellate Court allowed the cross-objections and suit for specific performance of agreement to sell was decreed on 22.12.2011. It is not in dispute that the decree of the Appellate Court has attained finality. When the decree was sought to be enforced by filing execution, that the petitioner filed objections on the ground that the disputed property was ancestral coparcenary joint Hindu family property. Judgment Debtor (JD) No. 1 acquired the property from his father for which mutation No. 457 was sanctioned on the basis of inheritance from his father Santa Singh. It was further stated that JD No. 1 cannot sell the property without legal necessity and benefit to the estate.

4. The prayer was also made before the Executing Court to frame issues on the objection petition and afford opportunity to the parties to lead evidence. The Executing Court observed that it cannot go behind the decree as petitioner has the remedy to approach the higher court to challenge the judgment granting decree for specific performance of agreement to sell.

5. I have heard learned counsel for the petitioner, carefully perused the impugned orders and also the paper-book.

6. Learned counsel for the petitioner tried to seek support from *jamabandi* (Annexure A-1) for the year 1985-86 for suggesting that the land in question was earlier in the ownership of Santa Singh father of respondent no. 2-defendant no. 1. The land was then entered in favour of respondent no. 2-defendant no. 1,

the vendor as per *jamabandi* (Annexure A-2) for the year 1990-91 and onwards.

7. The important and relevant factor is that the prayer made in the objection petition filed by the petitioner before the Executing Court is in the nature of seeking injunction against *karta* of the joint Hindu family from alienating the ancestral land which cannot be maintained.

8. The precise prayer made by the petitioner in his objection petition is reproduced as under:-

“That the judgment debtor no. 1 can't sell the suit land without any legal necessity or for the benefit of the estate out of which the objector has a right of his share as ancestral property. The citation of Supreme Court titled as “Subhod Kumar and others vs. Bhagwant Namdeorao Mehetre and others” as Civil Appeal No. 1584 of 2004, in which it is held that a Karta has power to alienate for value the joint family property either for necessity or for benefit to the estate. He can alienate with the consent of all the coparceners of the family, when he alienates for legal necessity, he alienates an interest which is larger than his undivided interest. When the karta, however, conveys by way of imprudent transaction, the alienation is voidable to the extent of the undivided share of the non-consenting coparcener. In the present case, the objector has not given his

consent to get register the sale deed of the suit land.”

9. The facts of **Sunil Kumar vs. Ram Parkash, 1988 (2) SCC 77**, are squarely applicable to the instant case. In that case, a suit for specific performance of agreement to sell was filed. In the said suit the sons of vendor made an application for being impleaded as the parties. Thereafter, the sons of the vendor filed a separate civil suit for permanent injunction stating *inter alia* that suit property was joint Hindu family coparcenary property of the plaintiffs and defendant no. 1; that there was no legal necessity for sale of the property nor it was an act of good management to sell the same to defendant no. 2 without the consent of the plaintiffs and without any legal necessity. Hon'ble Supreme Court held as under:-

“7. At the outset it is to be noticed that in a suit for permanent injunction under section 38 of the Specific Relief Act by a coparcener against the father or Manager of the Joint Hindu family property, an injunction cannot be granted as the coparcener has got equally efficacious remedy to get the sale set aside and recover possession of the property. Sub-Section (h) of Section 38 of Specific Relief Act bars the grant of such an injunction in the suit. Secondly, the plaintiff respondents brought this suit for permanent injunction restraining their father, the defendant

No. 1, from selling or alienating the property to the defendant No. 2 or any other person and also restraining the defendant No. 2 from proceeding with the suit for specific performance of the agreement to sell pending in the civil court. Thus the relief sought for is to restrain by permanent

injunction the Karta of the Joint Hindu Mitakshara Family, i.e. defendant No. 1, from selling or alienating the house property in question. The defendant No. 1 as Karta of the joint Hindu family has undoubtedly, the power to alienate the joint family property for legal necessity or for the benefit of the estate as well as for meeting antecedent debts. The grant of such a relief will have the effect of preventing the father permanently from selling or transferring the suit property belonging to the joint Hindu Undivided Family even if there is a genuine legal necessity for such transfer. If such a suit for injunction is held maintainable the effect will be that whenever the father as Karta of the Joint Hindu coparcener property will propose to sell such property owing to a bona fide legal necessity, any coparcener may come up with such a suit for permanent injunction and the father will

not be able to sell the property for legal necessity until and unless that suit is decided.

26. *I do not think that these submissions are sound. It is true that a coparcener takes by birth an interest in the ancestral property, but he is not entitled to separate possession of the coparcenary estate. His rights are not independent of the control of the karta. It would be for the karta to consider the actual pressure on the joint family estate. It would be for him to foresee the danger to be averted. And it would be for him to examine as to how best the joint family estate could be beneficially put into use to subserve the interests of the family. A coparcener cannot interfere in these acts of management. Apart from that, a father-karta in addition to the aforesaid powers of alienation has also the special power to sell or mortgage ancestral property to discharge his antecedent debt which is not tainted with immorality. If there is no such need or benefit, the purchaser takes risk and the right and interest of coparcener will remain unimpaired in the alienated property. No doubt the law confers a right on the coparcener to challenge the alienation made by karta, but that right is not inclusive of the right to obstruct alienation. Nor the*

right to obstruct alienation could be considered as incidental to the right to challenge the alienation. These are two distinct rights. One is the right to claim a share in the joint family estate free from unnecessary and unwanted encumbrance. The other is a right to interfere with the act of management of the joint family affairs. The coparcener cannot claim the latter right and indeed, he is not entitled for it. Therefore, he cannot move the court to grant relief by injunction restraining the karta from alienating the coparcenary property.”

10. If the petitioner has any right as a coparcener he cannot file the objections in the execution petition restraining respondent no. 2 from executing the sale deed. The petitioner can possibly challenge the alienation only after the sale deed is executed in conformity with the decree in favour of respondent no. 1.

11. It was also held by this Court in **Kulwinder Singh and another vs. Gurmukh Singh and others, 2006 (4) RCR (Civil) 561, Naresh and another vs. Babu Lal and others, 2006 (4) RCR (Civil) 459 and Satish Kumar vs. Sat Parkash, 2010 (2) RCR (Civil) 508** that a suit for permanent injunction by coparcener against father (*karta*) of joint Hindu family restraining him from alienating, mortgaging or disposing of ancestral coparcenary and

joint family property, is not maintainable. If the alienation is made without any legal necessity it can be challenged by way of suit after its completion.

12. Anyhow the three sons of judgment-debtor no. 1 were also parties to the civil suit, as defendant no. 1 executed the sale deeds in their favour subsequent to the date of agreement to sell. The judgment of learned trial Court (Annexure A-6) would reveal that the plea that defendant no. 1 was not competent to execute agreement to sell as the land in question was joint Hindu family ancestral coparcenary property was taken, but still the suit for specific performance was decreed. The petitioner was impleaded as one of the legal heir of defendant no. 3 before the trial Court as defendant no. 3 had died during pendency of the suit.

12. The Courts below have not gone into the aforesaid material aspect which was necessary for disposal of the objection petition. Though, not approving the reasons that weighed with the Courts below in dismissing the objection petition, I still find that there is no ground for interfering in the order passed by the Courts below.

13. Dismissed.

January 29, 2015
jk

(R.P. NAGRATH)
JUDGE