

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

**ESA No.3070 of 2002
Date of Decision: 18.09.2015**

Gurmail Kaur

.....Appellant

Vs

Jeet Singh through LRs.

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.L. Saini, Advocate
for the appellant.

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]. Appellant-objector is in second appeal against the judgment dated 19.03.2002 passed by District Judge, Faridkot vide which appeal against order dated 04.06.2001 passed by Civil Judge (Senior Division), Moga was dismissed.

[2]. Appellant is an objector and filed objections under Order 21 Rule 99 CPC, seeking release of plot including rooms and one hand pump measuring 7 marlas 4 sarsahies comprised in Khasra No.77//91 bounded in a specific manner as shown in the head note of the objections on the basis of sale deed dated 09.03.1987 executed by Darshan Singh son of Uttam Singh in her favour.

[3]. Darshan Singh son of Uttam Singh was owner of land in

question. He entered into an agreement to sell dated 16.12.1986 with Jeet Singh. An earnest amount to the tune of Rs.11,000/- was received by Darshan Singh against total sale consideration of Rs.15,000/-. 15.12.1987 was the date fixed for execution of the same. None appeared before the Sub Registrar on the date fixed. Jeet Singh filed Civil Suit No.83 dated 14.03.1988 for possession by way of specific performance. Suit was decreed.

[4]. Decree-holder Jeet Singh filed execution. Appellant filed third party objection in the execution on the ground that she is the owner of the suit land by dint of sale deed dated 09.03.1987 executed by Darshan Singh son of Uttam Singh.

[5]. The objection was dismissed by Executing Court on 04.06.2001 observing that there is no clear collusion between the objector Gurmail Kaur and the judgment debtor Darshan Singh in order to execute decree for specific performance in favour of decree holder Jeet Singh. Agreement to sell was executed between decree holder Jeet Singh and judgment debtor Darshan Singh on 16.12.1986. Date of registration of sale deed was fixed for 15.12.1987. Executing Court has observed that in order to deprive Jeet Singh of this agreement, Darshan Singh executed sale deed of the disputed land in favour of Gurmail Kaur on 06.03.1987 for consideration of Rs.8000/-, whereas he had already executed agreement to sell with Jeet Singh for a consideration of Rs.15000/- and has also received earnest amount to the tune of Rs.11000/-.

Jeet Singh has already obtained possession of the suit land in execution through due process of the Court. Gurmail Kaur neither found to be owner in possession of the suit land nor the decree holder has obtained possession by means of any forcible dispossession.

[6]. Feeling aggrieved against the aforesaid order dated 04.06.2001, appellant-objector filed appeal before First Appellate Executing Court. Learned Lower Appellate Court made out a new case in favour of the respondent. Apparently, appellant Gurmail Kaur is wife of Darshan Singh son of Sardara Singh. The Lower Appellate Court has illegally presumed that appellant Gurmail Kaur is wife of Darshan Singh son of Uttam Singh (judgment debtor) and that is how both acted in collusion in order to defeat right of decree holder. Para No.11 of the Lower Appellate Court, Judgment read as under:-

"I have also perused the evidence led by the objector on the record. Gurmail Kaur objector who has appeared as OW 11 does not appear to be a truthful witness. Though the possession was taken by the decree holder through the court in pursuance of the decree dated 08.12.1989, yet she has denied her knowledge, if the possession was taken by the decree holder through the court. She also denies her knowledge, if her husband entered into an agreement of sale. She also denies her knowledge about the pendency of the suit filed by the decree holder against the JD and the result thereof. Since objector Gurmail Kaur and Darshan Singh judgment debtor are none else

but are husband and wife, therefore, it cannot be believed that Gurmail Kaur objector was ignorant of the litigation between the parties and about the agreement executed by her husband Darshan Singh in favour of Jeet Singh decree holder. The instant objection petition appears to have been designed just to defeat the rights of the decree holder.”

[7]. Lower Appellate Court proceeded with the assumption in dismissing the appeal of the objector that she is not bona fide purchaser of the property. She was held to be wife of judgment debtor Darshan Singh and therefore, the objections have not been decided by way of following proper procedure.

[8]. In this appeal none has appeared from the very beginning on behalf of respondent. The appeal was admitted on 03.02.2004. Even subsequently, notice was issued to the respondent in CM No.4158-C of 2004. Jeet Singh son of Mukhtiar Singh died on 28.04.2003 leaving behind the legal representatives namely Parsin Kaur widow of Jeet Singh, Kulwinder Singh and Pritam Singh sons of Jeet Singh. The aforesaid legal heirs were duly brought on record vide order dated 23.08.2004.

[9]. Since the possession had already been taken by the decree holder in execution, it appears that this is the reason for not coming forward to pursue this case by the legal heirs of decree holder. In view of aforesaid, this Court is left with no option except to proceed with the appeal on merits in the absence of respondent-legal heirs of Jeet Singh.

[10]. Learned counsel for the appellant has contended that the appellant is not the wife of Darshan Singh son of Uttam Singh, rather she is wife of Darshan Singh son of Sardara Singh. Lower Appellate Court has gone wrong in presuming that the appellant is wife of Darshan Singh son of Uttam Singh (judgment debtor) and therefore, collusion has taken place. According to learned counsel for the appellant, right to get herself represented through Darshan Singh (judgment debtor) as GPA is something else which cannot be concluded to be a collusion as objector is not the wife of Darshan Singh (judgment debtor), therefore, her rights qua the property in question have to be determined by way of following proper procedure. Lower Appellate Court has illegally presumed status of appellant to be that of wife of judgment debtor without any material on record, rather, statement of OW-8 Kuldeep Kaur, OW-9 Sarwan Singh, OW 10 Gurdev Singh corroborated the possession of Gurmail Kaur over the plot in question and they were categorical in saying that decree holder Jeet Singh had taken possession of the plot and had also taken away all the belongings of Gurmail Kaur lying in the property. He had also uprooted the hand-pump.

[11]. I have considered the submissions made by learned counsel for the appellant.

[12]. The agreement to sell in favour of decree holder was executed on 16.12.1986 much before the date of sale deed in favour of the appellant on 09.03.1987. The sale consideration involved in

agreement to sell dated 11.12.1986 is to the tune of Rs.15,000/- for the land in question, whereas, in the subsequent sale deed in favour of the appellant total sale consideration is on the lesser side i.e. Rs. 8000/- without any justifiable reason by the vendor. The execution of agreement to sell has already been proved on record, therefore, the rights of the vendee have to be flown from normal consequence of agreement to sell and the same cannot be restricted in the absence of any exception in terms of Section 20 of the Specific Relief Act. The registration of subsequent sale deed dated 09.03.1987 even if it is presumed to be in favour of appellant by way of any distinct or independent relationship, the fact remains that the cause of appellant was being represented by judgment debtor himself as attorney of Gurmail Kaur.

[13]. In view of aforesaid, instinct of collusion cannot be ruled out particularly when in the sale deed dated 09.03.1987 the land has been sold for lesser amount without any justifiable reason by the judgment debtor. The subsequent conduct of judgment debtor in representing the cause of the objector further adds to the presumption that there was apparent collusion between the appellant and the judgment debtor for awarding the decree of specific possession arising out of the agreement to sell by all possible means. Mere description of appellant to be wife of Darshan Singh (judgment debtor) even if treated to be an omission, the fact remains that the collusion between the two has been proved. The appellant is

proved to have moved applications on record through her attorney Darshan Singh (judgment debtor).

[14]. Lower Appellate Court has proceeded with the case by assuming that Gurmail Kaur acted in collusion with the judgment debtor and has also filed applications through him as her attorney. Special power of attorney of Darshan Singh son of Uttam Singh dated 24.01.2000 available on page 259 of the record reveals that he appointed husband of Gurmail Kaur as his special power of attorney to do the acts on his behalf. Darshan Singh is shown to be attorney of Gurmail Kaur. The aforesaid fact further lends to the presumption that judgment debtor and the objector were in link with each other. At inter-mediatory stage of the suit, an application dated 22.02.2000 has been filed by attorney of Darshan Singh son of Sardara Singh under Order 8 Rule 13 CPC for setting aside the ex parte decree. Apparently, Darshan Singh judgement debtor acted as attorney of Darshan Singh son of Sardara Singh and moved the application. Earlier by special power of attorney dated 24.12.2000, Darshan Singh son of Uttam Singh appointed Darshan Singh son of Sardara Singh as his special power of attorney. The application so moved on 22.02.2000 was dismissed on 04.06.2001. Darshan Singh son of Uttam Singh was proceeded against ex parte vide order dated 08.12.1999 in the suit. He moved the aforesaid application through the husband of Gurmail Kaur i.e. Darshan Singh son of Sardara Singh on the ground that he had no knowledge about the decree. His

correct address was not given and address was given of Darshan Singh son of Uttam Singh resident of Godhewal, Moga, where he never resided. The Court observed in the said order that both Darshan Singh and Gurmail Kaur are instrument in deceiving the Court and the decree holder. There was no need to array Gurmail Kaur as party. Therefore, the application under Order 8 Rule 13 CPC was declined by observing that the objections of Gurmail Kaur under Order 21 Rule 99 CPC were pending in which Darshan Singh son of Sardara Singh has no locus standi to file the petition for setting aside the ex part decree dated 08.12.1999 for which separate application should have been filed under Order 9 Rule 13 CPC and not under Order Order 8 Rule 13 CPC by the concern party. The material on record reveals that there was an alliance between objector, her husband and judgment debtor. Execution of sale deed for a lesser amount is also to be seen in the said context. Admittedly, the agreement to sell dated 16.12.1986 was prior in point of time in favour of vendee Jeet Singh and subsequent sale dated 09.03.1987 is not based on any agreement to sell.

[15]. In view of aforesaid, even if there is some anomaly in mentioning Gurmail Kaur to be wife of Darshan Singh son of Uttam Singh no prejudice is going to be caused to the appellant/objector in the light of other attending circumstances in which she along with her husband are proved to be in collusion with judgment debtor Darshan Singh son of Uttam Singh.

[16]. In the light of above facts, this Court does not find any merit in the present appeal. Consequently, the appeal is dismissed.

September 18, 2015
prince

(RAJ MOHAN SINGH)
JUDGE