

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA No.2 of 2011 (O&M)
Date of Decision:08.10.2015

Sheoraj

.....Appellant

Versus

Sunita and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

Mr. A.P.S. Mann, Advocate
for respondent No.1.

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 Execution Second Appeal has been filed by decree holder Sheoraj against the judgment dated 26.09.2009 passed by Additional District Judge, Rewari whereby objections filed by the Objector-Sunita in execution of decree have been accepted in appeal.

[2]. Objector Sunita wife of Pal Singh filed objections against the execution of decree dated 07.03.1984. The Civil Suit in respect of Khasra No.183 measuring 3 kanals 1 marla to the extent of 15 marlas was decreed vide judgment and decree dated

07.03.1984 by the Sub Judge First Class, Rewari. The parties effected compromise in the suit and decree for possession was passed in favour of plaintiff-decree holder and the amount of Rs.1200/- was received by the defendant from the plaintiff on 07.03.1984. Jere panjam was also withdrawn by the defendant in view of said compromise.

[3]. Entries regarding compromise in the suit property were not implemented in terms of revenue record and therefore, execution was filed. The objector filed objections claiming therein that she is in possession of the suit property having taken possession on 29.01.1996. Sheo Chand never remained in possession in pursuance to the alleged lease deed on the basis of which pre-emption suit was filed and was decided on the basis of compromise. The alleged lease deed was claimed to be void document and possession of the objector was established by revenue record, i.e. jamabandi and decree dated 25.05.2002. The compromise decree was claimed to be not binding upon objector because objector as well as her vendor were not party to the decree and therefore, the alleged compromise decree was in utter conflict with law of pre-emption and was a nullity in the eyes of law. Possession was never transferred in favour of decree holder. Ram Chander (now deceased) filed an execution against Sheo Chand (respondent No.2) and Sultan Singh (respondent No.3) in respect of judgment and decree dated 07.03.1984. The

objector-Sunita filed objections on the ground that she is in possession of the plot in question previously owned and possessed by Sultan Singh vendor of the objector. The decree under execution is a compromise decree which was not signed by Sultan Singh vendor as well as by Sunita because Sultan Singh (vendor of the objector) was given up by the decree holder in a pre-emption suit and therefore, objector as well as her predecessor-in-interest i.e. Sultan Singh were not party to the compromise decree and therefore, compromise was not binding upon the rights of the objector as well as her predecessor-in-interest i.e. Sultan Singh. No pre-emption right was available to the decree holder against lease deed which was allegedly converted into transfer deed on the basis of compromise in which vendor was not party, rather he was given up by the decree holder. The compromise was the result of collusion and pre-emption law was not available in respect of lease deed, even if a compromise was effected which was not legally permissible for decreeing the suit of pre-emption, if there being any sale deed. In lease deed, there was a specific recital to the effect that lessor would be entitled to take back the possession on payment of lease amount from the lessor after 99 years. The compromise decree was against the statute and was nullity in itself.

[4]. The alleged lease deed in favour of Sheo Chand was without possession and that did not confer any right in favour of

Sheo Chand. The Executing Court framed the following issues:-

- “1. Whether the decree holder is entitled to execute the decree dated 07.03.1984? ODH*
- 2. Whether the objector is owner in possession of the suit property? OPO (Objector)*
- 3. Whether the execution objection is not maintainable? OPO (Objector)*
- 4. Relief.”*

[5]. In the Executing Court, both the parties have led their respective evidence on the aforesaid issues. Executing Court after appreciating the evidence on record dismissed the objections of the objector vide order dated 17.09.2008.

[6]. Feeling aggrieved against the said order, objector filed appeal before the Additional District Judge, Rewari. The appeal was accepted, thereby, accepting the objections of the objector-Sunita that is how present Execution Second Appeal has been filed for consideration of this Court.

[7]. I have heard arguments of both sides and have also perused the record with the able assistance of both the learned counsel for the parties.

[8]. There is a recital in the lease deed dated 29.07.1980 Ex.OW1/1 executed by Sultan Singh in favour of Sheo Chand for a period of 99 years. This lease deed was in respect of Khasra No.183 (3-1) to the extent of 15 marlas. According to the recital in this lease deed, possession has been handed over to lessee.

Lessor was entitled to take back possession after 99 years on payment of lease amount of Rs.1500/- to the lessee. On the basis of this lease deed Ex.OW1/1, Ram Chander filed suit for pre-emption against Sheo Chand and Sultan Singh. On 07.03.1984, plaintiff-Ram Chander gave up Sultan Singh-vendor and compromise Ex.DH1/3 took place between Ram Chander decree holder and lessee Sheo Chand, wherein suit of Ram Chander for pre-emption was decreed vide judgment and decree dated 07.03.1984 (judgment Ex.DH1/1 and decree sheet Ex.DH1/2).

[9]. Bhim Singh and Ram Chander filed a suit for permanent injunction impleading the objector-Sunita as proforma defendant against the contesting defendant Jagdish i.e suit Ex. OW5/1. In the aforesaid suit, Ram Chander and Bhim Singh admitted the possession of objector over the suit land bearing khasra No.183(3-1), but later on suit was dismissed in default vide order dated 26.05.2000 Ex.OW7/3. The aforesaid admission has evidentiary value to the effect that objector was in possession of land in question and said admission is admissible under Section 58 of the Evidence Act. Reference can be made to **Epoch Enterreports. Vs. M.V. Won Fu 2002 SAR (Civil) 913 (SC)**.

[10]. Even the objector-Sunita also filed suit for permanent injunction against Bhim Singh, Ram Chander, Hukam Chand, Tej Pal, Sheoraj and Satpal, vide **Civil Suit No.344 of 1997**. Said

Civil Suit was decreed in favour of objector-Sunita vide judgment and decree dated 25.05.2002 Ex.OW7/1 and Ex.OW7/2 respectively, holding objector-Sunita to be owner in possession of khasra No.183 (3-1). From the aforesaid, it is conclusively brought out that objector-Sunita is continuing as owner in possession of the suit land over the Khasra No.183 measuring 3 kanals 1 marla including 15 marlas of land which is subject matter of execution. The possession of 15 marlas was never handed over to lessee as per lease deed Ex.OW1/1. Neither the decree holder Ram Chander nor his lessee Sheo Chand was in possession of the land in view of lease deed dated 29.07.1980 Ex.OW1/1. Lease deed Ex.OW1/1 was without possession and therefore, that was not a lease deed in the eyes of law and did not create any right in favour of lessee. The pre-emption decree passed on the basis of above referred lease deed was a result of collusion and fraud and was a nullity. The lessor Sultan Singh was one of the defendant in the pre-emption suit but later on he was given up and was not signatory to compromise Ex.DH1/3 in the pre-emption suit filed by Ram Chander. The pre-emption decree obtained on the basis of compromise based on lease deed Ex. DW1/1 did not create any right in favour of the decree holder as the same was against the statutory provision of law and was not binding even on vendor Sultan Singh as he was not party to the litigation. The decree besides being fraudulent was

collusive in nature and can be thrown at any stage of litigation. The compromise was against public policy and was totally ineffective being without jurisdiction and can be challenged at any stage of litigation even in execution. The decree based on said compromise which was against the public policy is a nullity and is in-executable in nature, inexecutability of a decree can be assailed at any stage of litigation. If the decree is based on fraud, that can be challenged at any stage and fraudulent act can be thrown at any stage of litigation, even if the same is upheld by the Appellate Court. Fraud vitiates all solemnities act. Reference can be made to the following authorities on the basis of aforesaid proposition:-

1. State of Punjab and others. Vs. Amar Singh and another 1974 PLJ, SC 74.

2. Union of India Vs. Swaran Singh and others 1996 Supreme Appeals Reports (SC) 796.

[11]. The lease deed dated 29.07.1980 Ex.OW1/1 cannot be held to be a permanent alienation in view of recital in the lease deed that lessor would be entitled to take back possession after 99 years on payment of Rs.1500/- to the lessee. The lease deed was not amenable to any pre-emption nor the alleged compromise could have made a lease deed as a sale deed. The lease deed was never incorporated in the revenue record. The jamabandi Ex.DH1/4 for the year 1990-91 showed all the four

brothers namely Bhim Singh, Ram Chander, Harji Ram and Sultan Singh to be owner in possession of khasra No.183. Further jamabandi for the year 1995-96 showed Sunita to be in possession of 1/4th share having purchased the land from Sultan Singh in khasra No.183(3-1).

[12]. Additional District Judge, Rewari has rightly observed in the judgment that findings of the Executing Court on all the issues were perverse and were not legally sustainable. Decree holder was not entitled to execute decree dated 07.03.1984 against the objector and objections of the objector Sunita were maintainable as she has been found to be owner in established possession of the property in question. The appeal has been rightly allowed by the Additional District Judge, Rewari. It is a conceded fact that a lease deed was executed and not a sale deed which was made subject matter of pre-emption, therefore, decree on the basis of compromise in favour of Ram Chander is a nullity. The only objection of the appellant was that the factum of lease is an admitted fact and therefore, respondents No.2 and 3 cannot deny relationship of lessor and a lessee. The fact remains that pre-emption decree was totally void and in-executable in nature. Even if the decree of pre-emption was not assailed and no objection was filed in the main suit, nature of decree being in-executable cannot be translated in execution. The objection can be filed in execution. The decree based on

fraud can be thrown at any stage of litigation.

[13]. In view of aforesaid, no ground is made to interfere in Execution Second Appeal. Additional District Judge, Rewari while passing impugned judgment dated 26.09.2009 has exercised lawful jurisdiction vested in him and the view taken by Additional District Judge, Rewari cannot be faulted with on any of the ground mentioned in the appeal.

[14]. Consequently, this appeal is totally bereft of merits and the same is accordingly, dismissed.

October 08, 2015
prince

(RAJ MOHAN SINGH)
JUDGE