

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

**ESA No.44 of 2012 (O&M)
Date of Decision:18.02.2015**

Anita Devi

. . . . Appellant

Vs.

Amandeep Kaur Kalra and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.R.K. Shukla, Advocate,
for the appellant.

Mr.Mohit Garg, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J.

The present appeal has been filed against the orders of the Courts below, dismissing the objection filed by the appellant being the third party.

According to the case of the appellant, she has purchased residential house measuring 90.62 sq. yards from Bikramjit Singh s/o Harkirpal Singh on 8.11.2002 for a sum of ₹13,06,200/-. When the bailiff visited her house on 2.6.2010, she came to know that Amandeep Kaur, real niece of judgment/debtor Tajinder Singh, in collusion with him, concealing the material fact from the Court, purchased the property measuring 200 sq. yards in auction. She filed the objection for setting aside the sale by public auction held on 20.3.2008 by the Court Auctioneer, the sale certificate dated 27.4.2010 issued in favour of respondent No.1, for recalling of warrant of possession and dismissal of the execution application. The objection filed by the appellant was dismissed on

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5.10.2010 by the Executing Court. The appellant then preferred first appeal.

It is argued by learned counsel for the appellant that earlier the suit property was sold for ₹2 lacs on 30.3.2002 but the sale was set aside on 8.4.2003 on the ground of inadequacy of price and the second auction took place on 15.2.2008 in which the property in dispute fetched ₹1,35,000/-. The decree-holder/Bank filed a revision against the said auction but it was dismissed. It is submitted that had there been a public auction, the appellant would have also participated to protect the property in her possession from being sold. It is also submitted that the property has been sold to respondent No.1 at a throwaway price with the connivance of judgment-debtor and the Court auctioneer. It is also submitted that the objections have not been decided after framing of issues.

On the other hand, learned counsel for the respondent has submitted that against the said auction in which the property has been sold for a sum of ₹1,35,000/-, the decree-holder/Bank had filed revision petition No.5057 of 2010 which was dismissed on 13.8.2010. The operative part though has been reproduced in the order passed by the Appellate Court but it requires to be reproduced again in this order because it has been held by this Court that there was no fraud in the auction proceedings. Thus, for the ready reference, the operative part of the order passed by this Court is reproduced as under: -

“I have carefully considered the aforesaid contentions, but find no merit therein. In

auction sale conducted in execution proceedings of the Court, property is not likely to fetch the market price because the auction purchaser is well aware of the Court procedure. Money of the auction purchaser remains locked in the Court and the auction purchaser remains uncertain whether he would eventually get the property at all or not. In the instant case itself, this very property was sold in auction held on 30.3.2002 for ₹2 lacs and the said sale was not confirmed and was not set aside vide order dated 8.4.2003 i.e. after one year and the amount of ₹2 lacs deposited by the said auction purchaser remained deposited in the executing Court for the said period of one year and was refunded to him without any interest etc. Even now the auction was conducted on 20.3.2008 and the confirmation of sale has come vice impugned order dated 27.2.2010 Annexure P-9 i.e. almost after two years and the said order is also subject to challenge. Consequently, the sale cannot be set aside merely because the property has not fetched market price as assessed by the Patwari.

It may be added that the petitioner/DH is a bank. If any better buyer was available,

petitioner could very well procure the same. However, it is not even the case of the petitioner in application Annexure P-7 that any better buyer was available. The execution petition was pending for 11 long years and the sale of property could be finalized after such long period. If the sale is set aside, it may take another few years in finalizing the sale and there is no prospect of the property fetching better price. No fraud has been proved and there is only a vague plea of fraud without disclosing its particulars, much less substantiating the plea of fraud. Non-mentioning of estimated price of the property in the sale proclamation is by itself not sufficient to vitiate the sale and consequently to set aside the same.

It appears that the petitioner bank is going leisurely with the execution proceedings. Even the instant revision petition has been filed after almost six months of the passing of the impugned order. In fact the revision petition is liable to dismissal even on the ground of delay and laches.

For the reason aforesaid, I find no illegality in the impugned order of the executing Court.

The revision petition lacks any merit and is accordingly dismissed in limine.”

The sale was confirmed, sale certificate was granted and then warrant of possession was issued. The Court has observed that though the property has been sold twice, it cannot be believed that the appellant, who is residing in the disputed property, would not have come to know about the auction. The Trial Court has also observed that the suit property was undisputedly sold in the open auction, therefore, it cannot be said that the property was sold clandestinely by the Court auctioneer in connivance with judgment-debtor.

Thus, there is hardly any merit in the present appeal for the purpose of interference and as such the same is hereby dismissed.

18.02.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**