

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

(221)

**ESA No.41 of 2013 (O&M)
Decided on: April 20, 2015.**

Adarsh Kumar

.... Appellant

Versus

Gurpartap Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

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

Mr. Rakesh Kumar, Advocate,
for respondent No.1.

M.M.S. BEDI, J (ORAL)

The appellant is holding a decree for specific performance of the agreement to sell dated 05.11.1993 executed in his favour by Kartar Kaur. When plaintiff-appellant filed the execution application, objections were raised by sons of Kartar Kaur, judgment debtor claiming that the suit land had been sold to Gurpartap Singh respondent No.1 by registered sale deeds of the year 2005 and that since they were not owners of the suit land, they were unable to execute the sale deed as per the decree. The plaintiff contested the objections. Their objections were dismissed by the trial Court.

It is not out of place to mention here that separate objection petition was filed under Order 21 Rules 98 and 100 CPC by respondent No.1 Gurpartap Singh as third party objector claiming that Kartar Kaur had died and mutation of inheritance had been sanctioned in favour of three sons of Kartar Kaur. It was also pleaded that the said objector had purchased the

land in dispute vide three registered sale deeds. The objections were contested by the appellant-decree holder claiming that the objector was having knowledge about the pendency of the proceedings as such the objector did not have any legal right to resist the decree.

After dismissal of his objections, respondent No.1 filed appeal against order dated 21.03.2012. The first Appellate Court vide judgment dated 18.04.2013 has allowed the appeal observing that before disposal of the objection petition filed by the objector, it was incumbent upon the executing Court to decide the relevant issues by giving opportunity to lead evidence to the parties. Following issues were framed by the first Appellate Court:

- “(1) Whether the objector is owner in possession of the suit land on the basis of the sale deeds relied upon by him? OPA
- (2) Whether the objector is bona fide purchaser with consideration and without due notice of the pendency of the proceedings between the Decree Holder and the Judgment Debtor? OPA
- (3) Whether the objection filed by the objector is legally tenable? OPA
- (4) Relief.”

The main grievance of the decree holder-appellant is that the purchaser of the property during pendency of the suit have got no right to resist the decree as his rights if any are governed by rule of lis-pendence.

I have considered the contentions of learned counsel for the appellant and I am of the opinion that the lower Appellate Court has not finally determined the rights of the objector and decree-holder but the

parties have been directed to establish their respective claims/objections by leading evidence on the issues framed, as mentioned hereinabove.

Learned counsel for the appellant has vehemently urged that in view of legal position that objections are not legally tenable, the Executing Court had rightly dismissed the objection petition at the threshold.

I have heard learned counsel for the both the parties and I am of the opinion that the controversy whether the respondent No.1/objector can claim ownership or possession on the basis of the sale deed executed in his favour during pendency of the suit is now required to be decided by the Executing Court by giving finding on the issues. The legal objections of the appellant that the objection petition is not maintainable can also be decided under issue No.3 mentioned hereinabove.

Learned counsel for the parties inform at this stage that during pendency of the present appeal, both the parties have already led evidence and the objections are pending for final adjudication before the Executing Court on 07.05.2015. Since the objector has been given an opportunity to produce evidence and the question of fact or law raised by the objector are to be decided by giving issuewise finding, it will be expedient in the interest of justice to dispose of this appeal without expression of any opinion on merits with liberty to the decree-holder/appellant to challenge the maintainability of the objection petition and make an endeavour to obtain favourable finding on issue No.3 mentioned hereinabove. It will be open to the Executing Court to finally adjudicate the objections since this Court is of the opinion that questions relating to the right, title and interest in the property, which is subject matter of litigation, raised by the third party

are to be decided under Order 21 Rule 101 CPC read with Order 21 Rule 102 CPC.

This appeal is accordingly disposed of with a direction that the Executing Court will decide the objections finally within a period of one month after receipt of copy of this order, taking into consideration the provisions of Order 21 Rule 102 CPC.

Learned counsel for the appellant has placed reliance on judgment in *Usha Sinha Vs. Dina Ram and others 2008 (3) RCR (Civil) 145* in context to the scope of Order 21 Rule 102 CPC which lays down that the third party purchasing the property has got no right to obstruct execution of the decree. The said judgment can be relied upon by the appellant before the trial Court while adjudication of issue No.3.

(M.M.S. BEDI)
JUDGE

April 20, 2015
harsha