

In the High Court of Punjab and Haryana at Chandigarh.

**ESA No. 10 of 2015 (O&M)
Decided on 23.2.2015**

Balwinder Kaur

--Appellant

Vs.

Surinder Singh and another

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Whether Reporters of Local Newspapers may be allowed to see the judgment ?

To be referred to Reporters or not ?

Whether judgment should be reported in the Digest ?

Present: Mr.Ashok Gupta, Advocate, for the appellant

Mr.Vikas Bahl, Sr.Advocate, with
Mr. Ramandeep Singh, Advocate for the respondents

Rakesh Kumar Jain,J: (Oral)

This second appeal is filed by the objector, who had filed the objections under Order 21 Rule 97 of the Code of Civil Procedure,1908 (for short, 'the CPC'), resisting delivery of possession of the property in dispute to the decree holders.

The brief facts of the case are that the decree holders entered into an agreement to sell the property in dispute with one Niranjn Singh on 18.1.1988. They filed a suit for specific performance on 18.4.1988 only against Niranjn Singh, who appeared in the suit through his counsel Harbhagwan Singh on 28.7.1988. Thereafter, he did not appear and was

proceeded against ex-parte. He died on 28.10.1988.

During the pendency of the suit, Rajinder Kaur filed an application under Order 1 Rule 10 of the CPC, for being impleaded as a party in the suit. Her application was allowed by the trial Court. The suit was decreed on 21.9.1988. The decree reads as under:-

“It is ordered that in view of the discussion made in the foregoing issues, this suit for specific performance of agreement to sell dated 18.1.1988 is decreed with costs against the defendants and defendant No.1 is directed to perform his part of agreement i.e. to execute sale deed qua property in question in favour of the plaintiff after accepting remaining consideration”.

Rajinder Kaur, who, was arrayed as defendant No.2, challenged the judgment and decree dated 21.9.1988 in appeal but her appeal was dismissed on 01.9.2001. She also preferred R.S.A No. 3860 of 2003, which too was dismissed by this Court on 22.8.2003. Thereafter, she preferred S.L.P. No. 4342 of 2004 before the the Apex Court.

Rajinder Kaur expired during the pendency of the S.L.P and at that stage, Balwinder Kaur, the present appellant, entered into this litigation claiming herself to be the legal heir of Rajinder Kaur on the basis of a registered Will dated 01.7.1997. The S.L.P was dismissed on 03.7.2006 and the decree dated 21.9.1988 attained finality.

Thereafter, the decree holders filed an execution application No. 34 on 19.7.2002/02.8.2002 against both the defendants. In the said execution, following orders were passed by the Executing Court from time to time and the relevant portions, as pointed out by learned counsel for the appellant, are as under:-

“Present: Counsel for the parties.

On perusal of the files it is found that

J.D.No.1 was not served and J.D.No.2 was issued through munadi on filing of objection. The further proceedings continued regarding objections and no further orders were passed for service of JD No.1.

Now JD No.1 be summoned for 31.7.2007 and JD No.2 be also summoned through Munadi for the date fixed.

Sd/ CJ (JD)/04.06.2007”

“The decree holder is not duty bound to bring legal heirs of the judgment debtors. Niranjana Singh has died during the pendency of the suit and Rajinder Kaur represented him after his death. Rajinder Kaur died after the passing of the decree. Therefore, her legal heirs are not necessary to be brought on record”.

Sd/ CJ (JD) 31.7.07”

“Present: Sh.G.K.Verma,counsel for DH.
Sh.Rajesh Khurana counsel for objector

Munadi of both the JDs received back with the report that they have expired long ago. Counsel for DH has suffered statement stating that he is to implead any LR of JD. Request accepted at the risk and responsibility of DH. To come up on 16.8.2007 for consideration on objections”

Sd/CJ (JD) 31.7.07”

“Present: Counsel for the parties

Today, an application was moved by the decree holder/plaintiff for placing on record the proposed sale deed to be registered in the office of Sub Registrar, U.T, Chandigarh. On the basis of decree passed in favour of the plaintiff, the Ahlmad/Reader is directed to compare the same with the decree and then present the report on 3.9.2011.

Sd/CJ (JD)/24.8.2011”

Ultimately, the sale deed was registered on 05.9.2011 in favour of the decree holders.

The decree holders moved an application on 10.9.2011 for

issuance of warrant of possession before the Executing Court. The said application was adjourned for filing reply and consideration and on that date, the appellant filed her objections under Order 21 Rule 97 of the CPC. Subsequently, she also filed a Civil Suit No. 534 on 21.9.2011 seeking a declaration that she is owner in possession of the property in dispute on the basis of a Will purported to have been executed in her favour by Rajinder Kaur. In this suit, the decree holders filed an application under Order 7 Rule 11 of the CPC, which is yet to be decided.

The Executing Court dismissed the objection filed by the appellant on 10.1.2014 and the appeal filed by the plaintiff bearing Civil Appeal No. 387 dated 24.1.2014 was also dismissed. Hence the present appeal.

Learned counsel for the appellant has submitted that the Executing Court has committed an error of law as the decree in execution was only against defendant No.1 Niranjn Singh and could not have been executed against defendant No.2. It is submitted that as per Order 21 Rule 11 (2) (b) and (i) CPC, the decree holder should specifically mention the name of the parties and the name of the person against whom execution of the decree is filed. Since the decree was only against Niranjn Singh, who had also expired, therefore, it could not be executed against him and also referred to Order 21 Rule 17 and I-A of the CPC to contend that it is the duty of the Court to ascertain whether the requirements of Rule 11 to 14 have been complied with and if not complied with, the Court shall either ask the parties to remove the defect and if the defect is not removed within the time so fixed, under Order 21 Rule 17-A CPC, the Court should reject the execution application.

It is submitted that since the appellant has filed the objection as well as the suit which are still pending and it is yet to be decided as to whether the appellant has the locus standi to maintain the objection, the Executing Court or in the alternate, this Court while exercising jurisdiction under Order 21 Rule 29 of CPC, may stay the execution of decree during the pendency of the suit

It is further submitted that on 31.7.2007, learned counsel appearing for the decree holders had specifically made a statement that he does not want to bring on record the legal heirs of deceased Niranjn Singh, therefore, decree against a dead person in that regard is not maintainable. It is also submitted that even in the proposed sale deed, Rajinder Kaur has been reflected as the widow of Niranjn Singh, therefore, at this stage, learned Executing Court should not have dismissed the objection on the ground of her locus standi to maintain the objections.

In reply, learned counsel for the respondents/decrees holders has submitted that the appellant has no right or interest in the disputed property as all the issues being raised at this stage have already been decided by the Civil Court and have been upheld up to the Apex Court. In this regard, he has referred to para 11 of the trial Court judgment in Civil Suit No. 299 dated 18.4.1988 decided on 21.9.1988, the appeal to highlight the stand taken by Rajinder Kaur defendant No.2 and the findings recorded by the trial Court in paras No.11 and 21 which are reproduced below:-

“11. The defendant No. 2 namely Rajinder Kaur while appearing as DW deposed that she is the wife of Niranjn Singh. Since her marriage she is living in House No.1062-63, Manimajra, Mohalla Gobindpura, and she is in possession of the entire house. Her husband Niranjn Singh never executed any agreement to sell, nor did he receive earnest money as alleged. The agreement

to sell, the receipt of earnest money and document showing extension of time are all forged documents which have been fabricated just to grab the property of defendant in collusion with the witnesses of said Agreement to Sell. Niranjn Singh and his brother Nand Singh had purchased property in question from Naurata Ram in the year 1958 vide a registered sale deed in equal shares. Niranjn Singh sold his half share i.e. house No.1064 and after sale of his half share Niranjn Singh has got no right to sell property in dispute. She had purchased part of house directly from Naurata Ram. Sometime back Balbir Kaur kidnapped Niranjn Singh. She tried to grab the property by fabricating documents. She alone is owner of the property, as such a complaint was lodged in the police regarding the same. Nand Singh executed a Will in regard to share of his property which Niranjn Singh and Nand Singh jointly purchased from Naurata Ram. Nand Singh's brother agreed to the execution of the Will by Nand Singh in her favour. Niranjn Singh never told her that he had entered into an agreement to sell with plaintiff. He has no right to sell the same".

"21. Though defendant No.2 namely Rajinder Kaur has claimed herself to be the owner of property in question to some extent but however she has failed to bring on record any piece of evidence to prove this fact. Rajinder Kaur while appearing as DW-2 deposed that she is the sole owner of the property in question. However, on her mere oral statement alone, she cannot be declared to be the owner of the property in question. Jaswant Singh who is a relative of Rajinder Kaur while appearing as DW-3 brought on record copy of Sale Deed as Ex. DW-3/1, but this witness in his cross examination categorically deposed that he was not the marginal witness to the sale deed mentioned above. According to law, the said Sale Deed i.e Ex.DW-3/1 should have been proved on record by examining some marginal witness of the same. The mere photo copy of the Sale Deed does not confer any right upon any person unless the same is proved accordingly to law. Even otherwise, the property as mentioned in the sale deed does not tally with the property in dispute. Apart from the witnesses led by the plaintiffs, one of the defendant witness namely Madan Lal (DW-8) has categorically deposed that as per record of Notified Area

Committee house No. 1062 and 1063, Mohalla Gobindpura is in ownership of Niranjan Singh son of Datta Singh. Had Rajinder Kaur purchased any part of property in question then her name would have come on record of Notified Area Committee. Since as per record of Notified Area Committee Niranjan Singh is the sole owner of house No. 1062-63 and as Rajinder Kaur has failed to show her claim in respect of property in question, therefore, the plea of Rajinder Kaur that she is owner of the property in question does not stand proved. The same seems to be devoid of any merits, as such the same cannot be relied upon”.

It is further submitted that even Balwinder Kaur in her Civil Suit No.534 of 2011 has taken the same stand which was being taken by her predecessor Rajinder Kaur through out up to the Apex Court, therefore, she has to sink and swim with Rajinder Kaur, being allegedly her legal heir. It is further submitted by him that the appellant had filed objection under Order 21 Rule 97 CPC to resist the delivery of possession as a third party. The said objection has been dismissed by the impugned order because as per Order 21 Rule 102 of CPC, she was transferee pendente-lite, therefore, could not have maintained the objection.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that there is no merit in this revision petition.

The arguments raised by learned counsel for the appellant while referring to the provisions of Order 21 Rules 11 and 17 of the CPC, are though attractive but are not available to him because the objection petition filed by the appellants has been dismissed by both the Courts below on the ground that the appellant has no locus standi to maintain it. It has been held that the appellant has not been proved to be the legal heir of deceased Niranjan Singh much-less Rajinder Kaur, therefore, the objection by the

appellant as a third party in possession is not maintainable.

The other argument raised with regard to right of the appellant to seek the disputed property has already been dealt with by the Civil Court in para 11 and 21 of its judgment which has become final between the parties because the decree holders remained successful through out up to the Supreme Court. Even otherwise, if there is an alleged Will in favour of the appellant, she would be a transferee pendente lite and has no right to maintain the objection under Order 21 Rule 97 of CPC in view of Order 21 Rule 102 of CPC.

Thus, looking from any angle, this appeal has no merit and hence the same is hereby dismissed.

23.2.2015
RR

(Rakesh Kumar Jain)
Judge