

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

ESA No.8 of 2015 (O&M)
Date of Decision:30.06.2015

Pardeep Kumar

. . . .Appellant

Versus

Surinder Singh and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Ashish Aggarwal, Sr. Advocate, with
Mr.Kartik Gupta, Advocate,
for the appellant.

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

RAKESH KUMAR JAIN, J.

One Niranjn Singh s/o Datta Singh was the sole owner of House Nos.1062-63, Mohalla Gobindpura, Manimajra, UT, Chandigarh measuring 800 Sq. yards. On 18.1.1988, Niranjn Singh entered into an agreement to sell his house with Surinder Singh (respondent No.1) and Sheel Kumar (respondent No.2) for a total sale consideration of ₹2,84,000/- and received an advance of ₹36,000/- by way of receipt dated 18.1.1988 and fixed the date for execution and registration of sale deed as 28.2.1988. The said time was extended upto 15.3.1988 on the asking of the defendant-Niranjn Singh by way of a writing but despite notice issued by respondents No.1 and 2 to Niranjn Singh to be present on 15.3.1988 before the Sub-Registrar for the purpose of execution

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and registration of sale deed, he did not come present, which led to filing of the Civil Suit No.299 of 18.4.1988. Niranjn Singh appeared in the suit on 28.7.1988 through his Advocate, Harbhagwan Singh but failed to appear thereafter and was proceeded against *ex parte*. He died on 20.10.1988. Defendant No.2 in her suit, namely, Rajinder Kaur, who claimed herself to be the wife of Niranjn Singh, filed an application to be impleaded in his place which was allowed on 22.10.1992 and the suit was decreed on 21.9.1998. Rajinder Kaur filed an application for eviction against the present appellant under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 [for short 'the Act'] alleging that he is in possession for the last five years as a tenant at the rent of ₹4,000/- per month. The eviction petition was filed, *inter alia*, on the ground of non-payment of arrears of rent, change of uses, nuisance and personal necessity. In the said petition, the appellant herein appeared on 22.4.1998 but after availing sufficient opportunities, did not choose to file written statement and his evidence was ultimately struck off on 24.10.1998.

Rajinder Kaur had also filed Civil Appeal No.74 of 3.11.1998 against the judgment and decree of the Civil Court dated 21.9.1998 passed in favour of respondents No.1 & 2 in the suit for specific performance. The said appeal was dismissed on 1.9.2001. Rajinder Kaur then filed RSA No.3860 of 2003 which was also dismissed on 22.8.2003 and in the Special Leave Petition filed by Rajinder Kaur against the order dated 22.8.2003, Balwinder Kaur, mother of Sarpinderjot Singh filed an application to become her legal representative because Rajinder Kaur had died on 18.11.2003 but

the said SLP was also dismissed on 3.7.2006. The eviction petition filed by Rajinder Kaur was allowed on 7.4.2001 but the rent appeal No.8 filed by the present appellant against the order of eviction dated 7.4.2001 was set aside vide order dated 4.5.2007 passed by the Appellate Authority, Chandigarh on the ground that Rajinder Kaur has failed to prove herself to be the wife of Niranjn Singh and had no *locus Standi* to file and maintain the eviction petition before the Rent Controller for seeking eviction of the appellant.

Respondents No.1 & 2 filed execution application on 19.7.2002 both against Niranjn Singh and Rajinder Kaur, who were party to the decree, in which the appellant filed objection under Order 21 Rule 97 of the Code of Civil Procedure, 1908 [for short 'the CPC'] alleging that he is occupying the demised premises as a tenant and cannot be dispossessed in the garb of warrant of possession, which has been issued on the basis of decree dated 21.9.1998. There was another objection filed under Order 21 Rule 36 of the CPC by one Sarpinderjot Singh, who also claimed himself to be a tenant. The Executing Court passed a consolidated order in respect of both the objections filed by Sarpinderjot Singh and present appellant Pardeep Kumar. It was observed that the actual physical possession cannot be delivered to the decree-holders/respondents No.1 and 2, however, they can be granted symbolic possession in terms of Order 21 Rule 36 of the CPC. The order dated 20.2.2014 was challenged by way of Miscellaneous Appeal No.28 filed by respondents No.1 & 2. The Appellate Court discussed the finding recorded by the Executing Court in respect of the objections filed by Sarpinderjot Singh and Pardeep Kumar (appellant) separately,

dismissing the objection of Sarpinderjot Singh, observing that Sarpinderjot Singh is the son of Balwinder Kaur and Jagir Singh. The said Balwinder Kaur has set up a Will of Rajinder Kaur in her favour on the basis of which she had become a party in the SLP whose objection has been separately dismissed and Sarpinderjot Singh was introduced by Balwinder Kaur and Jagir Singh as a tenant without any documentary evidence. Insofar as the objection of the present appellant is concerned, the appellate Court dismissed it also on the ground that the appellant has failed to prove his tenancy and has been in collusion with Rajinder Kaur. It is pertinent to mention that order of the Appellate Court dated 8.1.2005, insofar as the objection of Sarpinderjot Singh is concerned, was challenged by way of CR No.479 of 2015 titled as *Sarpinderjot Singh Vs. Surinder Singh and another* which was dismissed by this Court on 4.2.2015 and order dated 8.1.2015 dismissing the objection filed by the present appellant under Order 21 Rule 97 of the CPC has now been challenged by way of this Appeal.

There is no dispute that many objections have been filed from time to time. In the execution of the decree dated 21.9.1998, Rajinder Kaur (defendant No.2) filed objection claiming herself to be the owner of the property which was dismissed. Balwinder Kaur filed objection claiming herself to be owner on the basis of Will purported to have been executed by Rajinder Kaur which was dismissed on 10.1.2014. The said order has not been challenged. Third objection was filed by Sarpinderjot Singh, which was dismissed on 22.2.2014 and the Civil Revision No.479 of 2015 was

also dismissed on 4.2.2015 and the fourth objection has been filed by the present appellant claiming himself to be a tenant in the property in dispute.

Learned counsel for the appellant has submitted that the decree dated 21.9.1998 cannot be executed as it has been passed against a dead person. In support of his submission, he has relied upon judgments rendered in the case **“Nachhattar Singh Vs. Darshan Singh and others”** 2010(4) PLR 764, **“Arya Peddakka and others Vs. Jangiti Balla Thimmaiah and another”** 1997 (1) ICC 264 and **“Hoshiarpur Central Co-operative Bank Vs. Urmar Harmonium Reed Workshop”** 1989 PLJ 151.

Learned counsel for respondents No.1 and 2 has submitted in this regard that the suit was filed against Niranjan Singh when he was alive. He appeared on 28.7.1988 through his Advocate Harbhagwan Singh and thereafter did not appear and was proceeded against *ex parte*. He died on 20.10.1988 and was replaced by one Rajinder Kaur, who claimed herself to be his wife and was thus impleaded as defendant No.2 on 22.10.1992. It is submitted that it is not a case where the suit was filed against a dead person. Learned counsel for respondents No.1 and 2 has also referred to Order 22 Rule 2B and Order 22 Rule 4 of the CPC to contend that as per Order 22 Rule 2B of the of the CPC [Punjab and Haryana High Court amendment], it is the duty of the heirs of deceased defendants to implead themselves in the suit if the death occurs after the institution of the suit and as per Order 22 Rule 4(4) of the CPC if the decree is passed in such a suit where defendant appeared then it

would have the same effect as if it had been passed against the defendant, who would have been alive.

I have considered the arguments raised by both the counsel for the parties in this regard.

In the case of **Nachhattar Singh (Supra)**, suit for declaration was filed claiming ownership and possession on the basis of sale deed dated 20.8.1965 against the defendants who were already dead. In the case of **Arya Peddakka and others (Supra)**, the proclamation of sale was after the decree on 11.5.1990 whereas the judgment-debtor died before the proclamation on 1.4.1990. The execution proceedings continued, sale was held on 7.6.1990 and confirmed on 23.1.1991. It was held that the proceedings were non-est for want of notice to the LRs and the same cannot be held to be valid without there being any LRs on record. In the case of **Hoshiarpur Central Co-operative bank (Supra)**, it has been observed that a decree would be non-est and a nullity if it is passed by a Court having no jurisdiction or if it is passed against a dead person or against a person, who at no stage was legally present before the Court, which passed the decree. None of these judgments support the case of the appellant because the suit was filed by respondents No.1 and 2 against Niranjana Singh, who was very much alive and was served with a notice of the suit, as a consequent thereof he put in appearance on 28.7.1998 through his counsel but chose not to appear thereafter and was proceeded against *ex parte*. After his death he was replaced by Rajinder Kaur as a legal representative on her application though she has not found to be his legally wedded wife by the higher Courts. As per order 22 Rule (2B)

of the CPC [Punjab and Haryana High Court amendment], the duty to bring on record the legal representatives of the deceased-defendant is of the heirs of the deceased and not of the person who is *dominus litis*. Order 22 Rule 4(4) of the CPC also provides that the Court may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing, and judgment may, in such case, be pronounced against the said defendant, notwithstanding the death of such defendant and shall have the same force and effect as it has been pronounced before death took place. The defendant Niranjn Singh appeared in the suit but failed to contest the same and hence, the judgment which has been pronounced against him has the same effect as if it has been pronounced in his presence. Moreover, there was no liability on the respondents to file an application for impleading the legal heirs of Niranjn Singh in view of Order 22 Rule 2B of the CPC as it was the duty of the heirs of Niranjn Singh, who were to implead themselves as defendants in his place after his death and actually an application was filed by Rajinder Kaur, alleging herself to be the widow of Niranjn Singh, which was allowed by the Court on 22.10.1992 and after that the suit was contested by her, Rajinder Kaur had even challenged the decree by way of appeal upto the Apex Court.

In view of the aforesaid discussion, the argument raised by learned counsel for the appellant that the suit filed against the dead person was a nullity is hereby rejected.

It is further argued by counsel for the appellant that the order of the Court below suffers from *res judicata* because a single appeal was filed by respondents No.1 and 2, though there were two separate objections filed by Sarpinderjot Singh and Pardeep Kumar (appellant). In support of his submission, he has relied upon decisions of this Court rendered in **“Harjeet Singh and others Vs. Mehar Singh”** 2010(4) Civil Court Cases 568 and **“Balbir Singh Vs. Lalit Mohan Jain and others”** 2012(6) RCR (Civil) 2658.

On the contrary learned counsel for the respondents has submitted that the judgments relied upon by counsel for the appellant is not at all applicable because the Executing Court had decided both the objections by way of a common order and the said order was challenged by way of an appeal in which the decision has been taken in respect of the objections raised by both the objectors separately.

The decision in the case of **Harjeet Singh (Supra)** is in respect of a suit for permanent injunction filed by the plaintiff and a cross suit filed by the defendant. A common judgment was delivered by the trial Court, dismissing the suit filed by the plaintiff but decreeing the suit of the defendants. The plaintiff filed appeal only against dismissal of the suit and no appeal was filed against the decree passed in favour of the defendants in his cross suit. Similar are the facts in the case of **Balbir Singh (Supra)** in which it has been held that the appeal filed against one of the decree would be barred by principle of *res judicata*.

The facts of this case are however, altogether different because there is a decree in favour of respondents which has been

sought to be executed. In the execution, two different objections have been filed, which were both allowed by the Executing Court by way of common order and thus, the said common order was challenged by way of a single appeal. There was no contrary order passed in the objection for which the appellants were required to file two separate appeals and in view thereof, the issue raised by learned counsel for the appellant in this regard is found to be without any merit and is rejected.

Learned counsel for the appellant has further submitted that he is in possession as a tenant by virtue of an oral tenancy which is permissible in law and has referred to decisions rendered in **“Hari Chand Vs. Smt. Banti”** 2009(1) RCR (Rent) 214, **“Gaiinda Ram etc. Vs. L.C. Narula”** 2001(2) RCR (Rent) 660 and **“Jagdish Singh Vs. Balwant Singh and others”** 2003(2) RCR (Rent) 227.

In reply thereto, learned counsel for the respondents has submitted that the appellant is trying to protect the alleged tenancy which came into being during the pendency of the suit and is hit by principle of *lis pendens*. It is argued that the eviction petition was filed by Rajinder Kaur in which she had alleged that the appellant has been inducted as a tenant by her 5 years back i.e. somewhere in 1993. The appellant contested the petition on the ground that he is no more a tenant and has rather become the owner by virtue of sale deed which he had failed to prove but did not deny that he is in possession for more than 5 years. It is also submitted that even the document appended with this appeal as Annexure A-2 is also of the year 1994 and there is no evidence led by the appellant except for his bald statement that he is in possession for more than 30 years.

He has relied upon a judgment of this Court in the case of **“Jati Ram Saini Vs. Prithi alias Sansi and others”** 1996(2) PLR 745 to contend that appeal or execution is continuation of suit and the principle of *lis pendens* would apply till the decree is satisfied and any transfer made to defeat the right of the decree holder would be hit by principle of *lis pendens*.

I am in full agreement with the argument raised by counsel for the respondents because no evidence has been led by the appellant that he is in possession prior to the filing of the suit by the respondents as he alleged himself to be inducted as a tenant by Rajinder Kaur, who came on the scene of this litigation after the death of Niranjn Singh when an application to become a party was allowed on 22.10.1992 in the suit.

The last argument raised by counsel for the appellant is that the learned Court below has erred in dismissing his objection without framing issues. In this regard, learned counsel for the respondents has relied upon a decision of this Court in the case of **“Bikram Singh Vs. Surjit Singh and others”** 2004(3) PLR 129 in which it has been held that it is not necessary that the Court must frame issues and grant opportunity to parties to lead evidence to decide frivolous and vexatious objections, filed with a view to delay and defeat the execution of the decree. In this case also there is a spate of objections filed one after the other to hold on to the property in question, otherwise the decree was passed against Niranjn Singh, as far back on 21.9.1998, which has attained finality upto the Apex Court and the objections, whether filed by Rajinder Kaur, the alleged widow of Niranjn Singh and Balwinder Kaur, the alleged

daughter of Niranjana Singh or the son of Balwinder Kaur have already been dismissed and the objections raised by the present appellant that he is a tenant over the property in dispute, has also been rightly dismissed by the lower Appellate Court.

In view of the aforesaid discussion, I do not find any merit in the present appeal and the same is hereby dismissed.

30.06.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**