

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ESA 9 of 2015 (O&M)

Date of Decision: March 18, 2015

M/s Pokhar Mal Kishan Chand

.....Appellant

Vs.

Smt. Usha Gupta and others

.....Respondents

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

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Present:- Mr.Vivek Lamba, Advocate
for the appellant.

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

Misc. application is allowed as prayed for.

This Execution Second Appeal has been filed by the objector against the order passed by Additional District Judge, Panipat, dated January 17, 2015 dismissing the appeal against the order dated October 9, 2013 passed by Civil Judge (Senior Division), Panipat, affirming the order dismissing the objections under Order 21 Rules 96, 97 and 100 CPC read with Section 151 CPC.

Brief facts relevant for the decision of the present appeal are that respondent No.2 Sunil Kumar Garg was owner of the shop in dispute.

He entered into agreement of sale regarding the said shop to respondent No.1 Smt. Usha Rani. Pursuant to a dispute having arisen, a suit for specific performance was filed against respondent No.2 alleging that respondent No.2 is not honouring the agreement and has further entered into an agreement with respondent No.3 to sell the abovementioned shop. The suit was decreed in favour of respondent No.1 and the appeals filed by defendant- respondents No.1 and 3 were dismissed. Thereafter respondent No.1 filed execution application, in which the appellant who is a widower of respondent No.3 Kamlesh Rani, filed objections claiming that he is in possession of the shop as tenant of respondent No.1 since April 1, 1995 and using the same as godown as his firm is working as Commission agent in Shop No. 263, New Grain Market, Panipat.

Main grievance of the learned counsel for the appellant is that all the questions raised by a third party in objection petition are to be considered as a regular suit after framing issues and permitting the parties to lead evidence. It has been argued that under Order 21 Rule 101 CPC, all the questions raised regarding right, title or interest in the property in dispute should be adjudicated by Executing Court and not by a separate suit and the procedure of regular suit should be followed.

I have considered the arguments of learned counsel for the petitioner- objector and perused the judgment passed by Civil Court in favour of the decree holder respondent Usha Gupta wife of Parveen Kumar Gupta against Sunil Kumar Garg and Kamlesh Rani, the judgment debtors.

The decree for specific performance was passed against Sunil Kumar Garg and Kamlesh Rani who happens to be the wife of the objector- appellant Ram Kumar who claims to be proprietor of M/s Pokhar Mal Kishan Chand, directing the judgment debtor Sunil Kumar Garg to execute the sale deed in respect of the shop in dispute after receiving balance sale consideration of Rs.5.70 lacs and get the sale deed registered within a period of three months. The decree dated February 6, 2007 passed by the Civil Court was confirmed in appeal. The decree holder respondent No.1 Usha Gupta filed execution in which the petitioner filed objections under Order 21 Rules 96, 97 and 101 CPC claiming to be in possession of the shop in dispute as tenant of defendant- respondent No.3 since 1995 and that the objector firm has been working as Commission Agent in the shop in dispute w.e.f. April 1, 1995 at the rate of Rs.10000/- per month and has been paying rent regularly. Sunil Kumar Garg allegedly enhanced rent from Rs.10000/- to Rs.12000/- from April 1, 2002 and the objector has paid rent upto March 31, 2010. On the basis of the rent receipts, second enhancement agreement and certified copy of form 'F', rights of the decree holder in execution were sought to be interrupted afresh.

Both the Courts below have taken into consideration the photostat copies of the rent receipts, the rent agreement and other documents including the application for renewal of licence by the objector-petitioner submitted to Secretary, Market Committee, Panipat as well as the income tax return of the year 2012-13 of Kamlesh Rani, the wife of the objector and

arrived at a conclusion that all the documents have been prepared and got executed as an afterthought with an objective to resist and obstruct the execution of the decree for specific performance passed in favour of decree holder respondent No.1. The wife of objector was defendant No.2. She had also filed an appeal against the decree for specific performance which was ultimately dismissed. The petitioner being her husband and being represented through the same counsel, is presumed to have knowledge of the said proceedings. The objection of the petitioner being husband of Kamlesh Rani, judgment debtor, is prima facie an act which suffers from the vice of malafide to defeat the rights of the decree holder to take possession. No doubt, the Executing Court has to decide the objections as a suit but where prima facie claim of the objector is apparently based on fraud, on the face of it, being played on the Court, it is not always necessary to frame the issues and follow the entire procedure and formalities of a civil suit in accordance with provisions of CPC and the provisions of the Indian Evidence Act. Both the Courts below have taken into consideration each and every document produced by the petitioner-objector and scrutinized the credibility and authenticity of each document. Except for the formality of framing issues, all the niceties of the civil suit have been followed. No ground is made out for interference in the well reasoned orders passed by the Courts below on appreciation of the material available on the record. Scope of interference in the Execution Second Appeal is meager. Appeal is thus dismissed.

March 18, 2015
sanjay

(M.M.S.BEDI)
JUDGE