

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.2009 of 2016 (O&M)

Date of Decision.28.09.2016

Darshan Singh and others

.....Petitioners

Vs.

Darbara Singh and others

.....Respondents

2. C.R. No.2629 of 2016 (O&M)

Gurdhian Singh and others

.....Petitioners

Vs.

Darbara Singh and others

.....Respondents

3. C.R. No.2329 of 2016 (O&M)

Tara Singh and others

.....Petitioners

Vs.

Darbara Singh and others

.....Respondents

4. C.R. No.2621 of 2016 (O&M)

Dalip Kaur

.....Petitioners

Vs.

Darbara Singh and others

.....Respondents

5. C.R. No.2314 of 2016 (O&M)

Mukhtiar Kaur

.....Petitioner

Vs.

Darbara Singh and others

.....Respondents

6. C.R. No.6506 of 2016 (O&M)

Mukhtiar Kaur and others

.....Petitioners

Vs.

Darbara Singh and others

.....Respondents

7. C.R. No.6416 of 2016 (O&M)

Jagdeep Singh and another

.....Petitioners

Vs.

Darbara Singh and others

.....Respondents

Present: Mr. Vishal Sodhi, Advocate
for the petitioners in all revision petitions.

Mr. Rajiv Kataria, Advocate
for the respondents No.1 to 6, 8, 9, 11, 13, 16 to 18, 34 to 39
and 41 to 47 in C.R. Nos.2009, 2629, 2329, 2621 and 2314 of
2016.

Mr. N.P.S. Maan, Advocate for
Mr. Paramjit Singh Padda, Assistant Collector (SDM), Barnala.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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AMIT RAWAL J. (ORAL)

C.M. No.19638-CII of 2016

Application is allowed.

Annexure A-1 and A-2 are taken on record.

C.R. No.2009 of 2016

Notice of motion in C.R. Nos.6416 and 6506 of 2016.

Mr. Rajiv Kataria, Advocate accepts notice on behalf of
respondent Nos. 1 to 6, 8, 9, 11, 13, 16 to 18, 34 to 39 and 41 to 47.

This order of mine shall dispose of 7 revision petitions against
the impugned order whereby the application moved by the petitioners-
plaintiffs to adjourn sine die or for staying the proceedings of the suit filed
against the order dated 19.10.2012, has been dismissed.

Mr. Vishal Sodhi, learned counsel appearing for the petitioners
and the mortgagees of the land submits that Sarwan Singh (since deceased)
was the mortgagor. He died issueless. One Jeon Kaur, who was sister of

legal heirs of Sarwan Singh who was owner of the suit land and further declaration that he is deemed to have died. The aforementioned suit was dismissed and appeal filed against the same also met with the same fate. The regular second appeal bearing No.904 of 1975 filed against the aforementioned judgments and decrees was allowed, vide order dated 05.05.2008, in essence, the plaintiffs' suit for declaration to the effect that they are the next heirs of Sarwan Singh was decreed. The aforementioned judgment rendered in the aforementioned regular second appeal was challenged before the Hon'ble Supreme Court and the judgment passed in RSA No.904 of 1975 was set aside and the case was remanded back for fresh consideration but the decision even after reconsideration remained the same. The aforementioned judgment was again challenged before the Hon'ble Supreme Court in SLP No.26117-26118 of 2008 wherein vide order dated 17.09.2010, interim stay qua dispossession was granted.

On the basis of the judgment and decree rendered in the aforementioned regular second appeal, respondents filed a suit for redemption before the office of Collector, Tapa, District Barnala by invoking the provisions of Section 4 of the Redemption of Mortgages (Punjab) Act, 1913. The aforementioned suit, as noticed above, was allowed by the Collector with a rider that the possession shall only be handed over after the disposal of the pending SLP i.e the matter qua possession is pending consideration before the Hon'ble Supreme Court.

He submits that since the petitioners being aggrieved of the aforementioned order filed the appeal which is treated as suit before the Civil Court having jurisdiction under law, an application for adjourning the suit sine die was moved till the disposal of SLP pending before the Hon'ble

Supreme Court, as the continuance of the suit in such eventuality, would be a farcical exercise but the same has erroneously been dismissed by the Court below. It is in this backdrop of the matter, the revision petition has been filed.

The counsel for the petitioners further submits that the Assistant Collector had also joined hand with Jeon Kaur and others and this fact was brought to the notice of this Court. This Court while staying the proceedings had also called upon the Assistant Collector to be present in Court and he had put in appearance and even filed the affidavit. He submits that appropriate action be taken against him in accordance with law.

Mr. Maan, learned counsel appearing for the Assistant Collector submits that as per the contents of the affidavit and information obtained from the office of Sub Registrar, no sale deed in favour of the Assistant Collector had ever been presented or rejected at any point of time for the period from 01.09.2012 to 30.04.2013.

Mr. Rajiv Kataria, learned counsel appearing for respondent Nos.1 to 6, 8, 9, 11, 13, 16 to 18, 34 to 39 and 41 to 47 submits that the trial of the suit may be continued and the trial Court would not be able to pass the order of possession in view of the interim order of stay passed by the Hon'ble Supreme Court in SLP. The Court can decide the suit uninfluenced and staying of the suit would unnecessarily cause prejudice to the respondents.

I have heard learned counsel for the parties and appraised the paper book. Shown of the facts noticed above, I am of the view that once the order of redemption i.e. 19.10.2012 envisaged that the petitioners shall be able to get the possession of the land only after the matter said to be

pending before the Hon'ble Supreme Court is decided. In my view, continuing of the suit would be a farcical exercise as it is yet to be determined whether the petitioners before the Assistant Collector are actually legal heirs of Sarwan Singh i.e. mortgagor or not. Unless and until the matter is not adjudicated, it would be far reaching to form an opinion that Jeon Kaur and others are legal representatives of Sarwan Singh. This fact has not been noticed by the trial Court.

In view of the foregoing reasons, the order under challenge is set aside and the proceedings before the Court below are stayed sine die. The parties are at liberty to make a request for revival of the civil suit as and when the SLP stated to be pending before the Hon'ble Supreme Court is decided or if a situation so warrants initiation of trial of the suit.

I have gone through the affidavit of Mr. Paramjit Singh Padda, Assistant Collector (SDM) Barnala and found the reply to be satisfactory. He is discharged from the presence in Court.

The revision petition is disposed of in the above terms. Nothing observed herein shall be construed as expression of opinion on merits of the pending suit or the defence taken therein.

(AMIT RAWAL)
JUDGE

September 28, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No