

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

1. CR No.2809 of 2016 (O&M)
Date of decision : 16.09.2016

Labh Singh

...Petitioner

Versus

Harbachan Singh since deceased through LRs Amarjit Kaur and others

..Respondents

2. ESA Nos.30 to 185 of 2016
Date of decision : 16.09.2016

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Vishal Mittal, Advocate for the petitioner.
(In CR No.2809 of 2016)

Mr. M.L. Saggar, Sr. Advocate with
Ms. Armaan Saggar, Advocate for appellant.
(In all ESAs)

Mr. M.L. Sarin, Sr. Advocate with
Mr. Vijay Sharma, Advocate for
respondent No.1(ii) and 2(i) and (iv)
(In CR No.2809 of 2016)

AMIT RAWAL, J. (Oral)

CM No.8301-CII of 2016

For the reasons stated in the application, which is duly
supported by an affidavit, LRs of respondent No.1(iii)-Bhavjinder Singh are

ordered to be brought on record for the purpose of prosecuting the present revision petition.

Application stands allowed.

Main cases

This order of mine shall dispose of 156 ESAs at the instance of DH and 1 revision petition filed at the instance of Objector who are aggrieved of the order dated 08.08.2014, whereby objections filed under Order 21 Rule 97 of Code of Civil Procedure against the judgment and decree, whereby suit had been decreed in respect of three villages vide judgment and decree dated 07.11.1983 and thereafter lower Appellate Court vide judgment and decree dated 15.12.1986 decreed the suit in toto i.e. respective all villages with a direction to revenue officials to correct the entries in the name of respondent.

Objectors in CR No.2809 of 2016 filed the objections on the ground that they are owners of the property in conforment of the proprietary rights and also setup a claim of adverse possession. Vide order dated 08.08.2014, the Objecting Court allowed the objection on the premise that Decree Holder failed to implead the Objectors in the suit and, therefore, the suit was held not maintainable but partly allowed the execution application vis-a-vis only mutation by giving liberty to the Decree Holder to claim the possession of the property in due course of law. The operative part of the order rendered by the trial Court, reads thus:-

“I am further fortified by the judgment titled as Inder Singh Vs. Piara Singh and anr. 1993(1) The Punjab Law Reporter 241 (P&H) (DB) wherein it is observed in

para no.7 that the possession of immoveable property covered by a decree can be delivered to DH by removing the person only if the person is bound by the decree. But in the present case, the objectors are not bound by the decree, being not party to the suit filed by DH and as admitted they were in possession over the property in question, as per the revenue record and therefore, the present decree is not binding upon them.

In view of my above discussion and in terms of the well settled law and the present proposition before this Court, it is the considered opinion of this Court that the present decree is unexecutable, qua the relief of possession claimed by the DHs and accordingly, the relief of possession cannot be granted in favour of the DHs. Hence, both the aforementioned issues are decided in favour of the objectors and against the DHs.

Issue No.3 (Relief)

In view of my above discussion and the findings recorded on the aforementioned issues, all the objection petitions, filed in the present case by the three set of objectors, succeeds and the same are hereby allowed.

However, the DHs can claim the possession of the property in due course of law and for getting the mutation sanctioned in their favour, the DHs can approach the revenue officials, who are directed to correct the revenue entries in terms of declaration of the ownership in favour of DHs, within a period of two months from the date of this order. Accordingly, the execution petition is also partly allowed and disposed off.

Files of all the objection petitions be consigned to the record room.”

Objectors and as well as Decree Holder feeling aggrieved of the

aforementioned findings, filed the appeal. The appeals have been dismissed being not maintainable. It is in this aspect, all ESAs and one CR at the instance of Decree Holder and CR No.2809 of 2016 at the instance of the Objectors has been filed.

Mr. M.L. Saggar, learned Senior Counsel assisted by Ms. Armaan Saggar, Advocate and Mr. M.L. Sarin, Ld. Senior Counsel assisted by Mr. Vijay Sharma, learned counsel appearing on behalf of Decree Holder and as well as Mr. Mittal for Objectors submits, that findings rendered by the First Appellate Court that the appeal was not maintainable is neither here nor there. He submits that without referring to the contents of objection being filed, under provision of Order 21 Rule 97, the procedure for adjudication of the same is prescribed under Order 21 Rule 100. Any adjudication thereof statutorily is a decree and, therefore, appeal as per Rule 103 Order 21 was/is maintainable and rightly so, appeal was filed, but the lower Appellate Court has erroneously dismissed by holding that objections, on behalf of Objectors, were also not maintainable and had given the liberty to the Objectors to file civil suit. He submits that findings of the Executing Court in partly allowing the execution application vis-a-vis mutation and given the liberty to file suit has remained untouched. In fact, the petitioners/appellants have been left in lurch, much less, remediless.

I have heard learned counsel for the parties and appraised the paper book.

For the sake of brevity, provisions of Order 21 Rule 97, 100 and 103, of CPC reads thus:-

Order 21 Rule 97:-

“97. Resistance or obstruction to possession of immovable property.- (1) *Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.*

(2) Where any application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained”

Order 21 Rule 100:-

“100. Order to be passed upon application complaining of dispossession.- *Upon the determination of the questions referred to in rule 101, the court shall, in accordance with such determination,—*

(a) make an Order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other Order as, in the circumstances of the case, it may deem fit.”

Order 21 Rule 103:-

“103. Orders to be treated as decrees.- *Where any application has been adjudicated upon under rule 98 or rule 100, the Order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.”*

On juxta-position of the aforementioned provisions of law, it is

evident that procedure for dealing with the objections under Rule 97 as prescribed under Rule 100 and any adjudication under Rule 100 is appealable as per the provision of Rule 103. The decision of the objections have to be treated as decree, in essence, objections filed at the instance of Objector are treated as suit as no separate suit is maintainable.

In my view, findings given by the lower Appellate Court giving liberty to the Decree Holder to claim the possession of the property in due course of law is against settled canons of law, much less, Provision of Rule 103 of Order 21. In my view aforementioned provisions of law has meticulously not been pondered upon. The language of the aforementioned provisions of law is plain and unambiguous. If the order under challenge is accepted, the Decree Holder are left in lurch and it will be entailing into third round of litigation as already prior to decree of the suit, there was another round of litigation way back in the year 1972 which had attained finality upto this Court.

I would not be commenting upon, conferring of proprietary rights in the present petition/appeals whether it was hit by doctrine akin to res judicata or not, as it would be subject matter of the adjudication before the lower Appellate Court.

In fact the order of the lower Appellate Court in my view holding that the objections were not maintainable has left the appellants in total quandary. The Court should have allowed the appeal by setting aside the order under challenge holding that the findings given by the trial Court entertaining the objections and giving liberty to the Objector regarding

liberty to file the suit should have been set aside particularly when conferring of proprietary rights was during the pendency of the suit.

Accordingly, order of the Appellate Court is hereby set aside. Matter is remitted back to the Appellate Court to decide the appeal afresh as appeal against the decision of the objections filed under Order 21 Rule 97 is maintainable and no separate suit as per Section 101 would lie.

In view of the aforementioned, all the ESAs and aforementioned revision petition are disposed of.

16.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No