

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 2898 of 2012(O&M)

Date of Decision:10.3.2016

Daljit Kaur and others

---Petitioners

vs.

Ram Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Amit Jain, Advocate
for the petitioners

Mr. Arvind Singh, Advocate
for respondents No. 1 to 7

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

Rekha Mittal, J.

The present petition has been directed against order dated 27.4.2012 passed by the Additional Civil Judge (Senior Division), Pehowa, dismissing the objections filed on behalf of Smt. Daljit Kaur widow and Jagtar Singh, successors in interest of Sukhdev Singh, Davinder Singh son of Ujaggar Singh and Balwant Kaur widow of Karnail Singh, judgment-debtors (in short “JDs”).

Puran and others filed civil suit No. 35 of 1985 titled “Puran and others vs. Sukhdev and others” decreed by the trial court on 19.11.1985. The defendants filed an appeal that came to be dismissed by the District Judge Kurukshetra vide judgment dated 13.6.1986. The regular second appeal No. 2149 of 1986 was dismissed by the High Court of Punjab and Haryana vide judgment dated 5.2.2008. The Special Leave Petition to Appeal was dismissed by Hon'ble the Supreme Court of India on 18.8.2011.

The JDs preferred an objection petition primarily on two counts namely the decree dated 9.2.1965, basis of the suit for possession filed by Puran and others is the result of fraud and misrepresentation, therefore, the said decree is null and void. The judgment and decree dated 9.2.1965 is nullity as jurisdiction of the civil court is barred in view of the provisions of the Punjab Village Common Lands (Regulation) Act, 1961(as applicable to the State of Haryana) (in short “the Act”) as the land is *shamlat deh*.

Counsel for the appellants would urge that the decree dated 9.2.1965 is the result of collusion between the sarpanch of the gram panchayat namely Sh. Dhanna Singh who admitted claim of the JDs without any authority in this regard. The decree based upon fraud can be challenged even in collateral proceedings. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court **Gram Panchayat of village Naulakha vs. Ujagar Singh 2000(4) R.C.R.(Civil)749**.

The second submission made by counsel is that as the civil court was not competent to entertain and try a suit as to whether the *shamlat deh* vests or does not vest in the gram panchayat, in view of bar created under the Act and question of inherent lack of jurisdiction can be raised at

any stage of the proceedings including execution, the judgment and decree dated 9.2.1965 being a nullity cannot be executed. For this purpose, he has referred to judgment of Hon'ble the Supreme Court **Contonment Board and another vs. church of North India 2011 (3) R.C.R.(Civil) 426.**

Counsel for the contesting respondents, on the contrary, has contended that the objection petition preferred by the appellants is nothing but an abuse and misuse of process of law with an intent to delay recovery of possession by the decree holders who had fought a protracted legal battle for more than 25 years and eventually came out successful with the dismissal of Special Leave Petition to Appeal by Hon'ble the Supreme Court in August 2011. It is further argued that the JDs contested claim of the decree holders on various grounds. The question of jurisdiction was one of the grounds raised in the memo of special leave petition but the same was given up by counsel for the appellants as has been specifically referred to in the order dated 18.8.2011 passed by Hon'ble the Supreme Court. Once the appellants have raised an issue in regard to jurisdiction of the civil court but did not press the same, it is not open for the appellants to agitate the same by filing objections before the executing court.

I have heard counsel for the parties and perused the records.

Concededly, Puran and others instituted the suit for possession on the basis of judgment and decree dated 9.2.1965 passed against the gram panchayat of village Bakhli, Tehsil Pehowa, District Kurukshetra. The appellants/objectors contested the proceedings and even raised the plea that they have become its owners by way of adverse possession. It is an admitted position of the case that the litigation initiated by Puran and

others remained pending for more than 25 years and ultimately came to be finalized with decision of Hon'ble the Supreme Court in Special Leave to Appeal (Civil) No. 18654 of 2008 "Sukhdev Singh (Dead) through Lrs and others vs. Puran and others" decided on 18.8.2011.

First of all, if the appellants wanted to avoid the consequences of the judgment and decree dated 9.2.1965 on the premise of its being the result of fraud or collusion, they were required to raise such a plea in their defence. If they had raised such a plea and has been negated by the courts, they are not entitled to agitate the same issue by filing an objection petition. On the contrary, if they have failed to raise such a plea which ought to have been raised by them, they are estopped by principle of constructive res judicata to raise such a plea in the execution. I would hasten to add that in the order dated 18.8.2011 passed by Hon'ble the Supreme Court, it was noted that Dina Nath and others filed a suit for possession by relying upon decree dated 9.2.1965. Jit Singh and another contested the suit by claiming that they were in possession and the mutation entries in favour of the plaintiffs were illegal and not binding on them. They also pleaded that decree dated 9.2.1965 was vitiated due to fraud because the same was obtained by the plaintiffs of that suit in collusion with the gram panchayat. The trial court upheld the contentions of Jit Singh and another declared the decree dated 9.2.1965 to be bogus and void because it was an end product of collusion between the plaintiffs and the gram panchayat. The judgment of the trial court was reversed by the Additional District Judge, Kurukshetra and the suit filed by Dina Nath and others was decreed. The second appeal preferred by Jit Singh and another was dismissed by the

learned Single Judge of the High Court vide judgment dated 12.3.1984. In the light of aforesaid discussion, neither there is merit in the contention of the appellants nor can they raise any such plea in the execution proceedings.

So far as the decree dated 9.2.1965 being bad for want of jurisdiction with the civil court, the appellants are debarred from raising such a plea which they sought to raise before Hon'ble the Supreme Court but later gave up. A relevant extract from the order dated 18.8.2011, reads thus:-

“.....in view of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, the Civil Court did not have the jurisdiction to entertain Civil Suit No. 34/E of 1964 and that being “shamlat deh”, the suit land vested in the Panchayat, but at the commencement of hearing, learned counsel for the petitioners fairly stated that these questions were not raised before the trial court, the lower appellate Court and the High Court.”

This apart, counsel for the appellants is not in a position to counter the submissions made by counsel for the respondents (decree holders) that jurisdiction of the civil court to try and entertain the dispute as to whether the shamlat deh vests or does not vest in the gram panchayat was excluded after the year 1970. In this view of the matter, plea of the appellants in regard to jurisdiction of the civil court being barred to pass the decree dated 9.2.1965 is highly misconceived and merits outright rejection.

For the foregoing reasons, finding no merit, the petition is

dismissed with costs.

(Rekha Mittal)
Judge

10.3.2016
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