

Civil Revision No.4284 of 2014

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4284 of 2014
Date of Decision: May 30th, 2016

Harbhajan Singh

...Petitioner

Versus

State Bank of India & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Ms.Satpreet Grewal Kapila, Advocate,
for the petitioner.

Mr.IPS Doabia, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Petitioner-objector is aggrieved of the proceedings initiated by the Executing Court in pursuance to the judgment and decree dated 7.1.1994, whereby recovery of ₹39,153-65P along with costs has been ordered.

Ms.Satpreet Grewal Kapila, learned counsel for the petitioner-objector submits that by virtue of the registered sale deed

dated 25.1.1967, Gurdit Singh son of Mangal Singh Ramgarhia, resident of Simble, Batala has sold the property in dispute to the father of the petitioner, namely, Bawa Singh son of Dhirta Singh Ramgarhia, resident of Waraich, Tehsil Gurdaspur. The borrowers, namely, Gurdit Singh and Harbhajan Singh, both son and father, after taking the benefit of similarity in the names, got the property of the petitioner and his father mortgaged with the Bank. The bank people also did not conduct the search report in letter and spirit, resulting into mortgage of the property with the Bank. The aforementioned borrowers failed to discharge the loan liability, resulting into passing of the judgment and decree. Realising this, the objections were filed, but the trial Court in a most fallacious and mechanical manner dismissed the same and even did not grant opportunity to lead evidence in this regard. Even the revenue record to show the ownership in favour of the petitioner has been placed on record before the Objecting Court, but the same have also been overlooked. She submits that in pursuance to the judgment and decree, the Bank has to recover only paltry amount than the decreed amount.

Mr.I.P.S.Doabia, learned counsel for respondent No.1 submits that the petitioner-objector has also availed the remedy of filing the suit, which is not maintainable in law. The aforementioned fact is not disputed by the learned counsel for the petitioner. She submits that the

petitioner was left in high and dry to protect the ownership and possession of the property and had been ill-advised to avail the remedy and undertakes to withdraw the suit in case the Court comes to the rescue of the petitioner.

I have heard the learned counsel for the parties and gone through the impugned order and of the view that the bank ought not to have sat as a mute spectator realising the fraud played upon them, rather gave them cause of action to initiate criminal proceedings against the borrowers over and above the legal remedy of recovery. They could have been more vigilant and careful in examining the search report and the same should not be accepted in an ordinary course.

The original sale deed in favour of the father of the petitioner has not been denied, but the fact remains that the seller was Gurdit Singh and in these circumstances, the borrowers, who, taking the benefits of similarity in the names, got the property mortgaged with the Bank. Jamabandies also reveal the ownership of the petitioner-plaintiff. It would be farcical exercise in remanding the matter back to the trial Court granting liberty to the petitioner, whereas, ex-facie, his ownership has been proved. The bank would be at liberty to seek the execution of the decree by realising their dues either by selling the immovable property, plant and machinery as only a paltry amount is sought to be

recovered, but not in the manner and mode as has been adopted.

The impugned order dismissing the objections as well as the order of auction proceedings is hereby set-aside.

Revision petition stands allowed.

May 30th, 2016
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(AMIT RAWAL)
JUDGE