

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4506 of 2012

Date of Decision: 23.02.2016

Bhag Singh

... Petitioner(s)

Versus

Baldev Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Onkar Rai, Advocate
for the petitioner(s).

Mr. Kuldeep Singh Saini, Advocate
for respondent No.8.

Mr. H.K.Brinda, Advocate
for respondent No.9.

Shekher Dhawan, J.

Present petition is challenge to the order dated 19.9.2011, passed by learned Additional Civil Judge (Senior Division), Anandpur Sahib, whereby execution application was dismissed.

Relevant facts of the case that present petitioner Bhag Singh had filed execution application in his capacity as transferee of decree on 18.2.2003. Judgment Debtors No.1 & 2 appeared and filed their reply taking the objection that Bhag Singh had no right to file the

present execution application as he is not a decree holder. Undisputedly, decree in Civil Suit No. 458 dated 28.11.1989 was passed by the Court on 21.10.1995 and appeal filed against the said order was dismissed by the then learned Additional District Judge, Ropar vide judgment & decree dated 7.2.2000. Thereafter, regular second appeal was filed before this Court and the same was dismissed on 2.7.2001. After passing of the decree, Avtar Singh, decree holder, sold the property vide sale deed dated 22.1.1996 and application was filed by Bhag Singh on 18.2.2003.

Learned counsel for the petitioner mainly submitted that property was purchased by petitioner-Bhag Singh during the pendency of litigation on 22.2.1997. The provisions of Section 146 CPC and Order 21 Rule 16 CPC are applicable but the Court below has not considered this fact. In support of his argument, reliance was placed upon the view taken by the co-ordinate Bench of this Court in case ***Ajaib Singh v. Amarjit Kaur and Others (Civil Revision No. 2937 of 2005, decided on 30.10.2006)***. Reliance was also placed upon the judgment rendered by another co-ordinate Bench of this Court in case ***Rajinder Pal Kaif v. Veena Rani 1991(2) PLR 401*** and the judgment rendered by the Madras High Court in case ***Gnanasundaram and Another v. Murugesu Naicker AIR 1989 Madras 343***.

While arguing on this point, learned counsel for the respondents submitted that as per provisions of Section 146 CPC and Order 21 Rule 16 CPC, transferee of the subject matter of the decree can continue the execution petition if it is already filed by the transferor decree holder or he can file a fresh execution petition on the ground that he is such a transferee under Section 146 CPC. On this point, reliance was placed upon the judgment rendered by this Court in case ***Ravi Parkash and Another v. Chuni Lal and Others AIR 1967 Punjab and Haryana 268***. Reliance was also placed upon the judgment rendered by Allahabad High Court in case ***Kedar Ram v.***

Additional District Judge II, Ballia 2005(1) RCR (Civil) 135.

Having considered the submissions made by learned counsel for the parties and view taken by this Court, Madras High Court as well as Allahabad High Court, this Court is of the considered view that the view taken by the Court below is not sustainable because petitioner is claiming interest in the property on the basis of sale deed and as an assignee of the decree holder, would be entitled to the execution of the decree.

As per amended provisions of Order 21 Rule 16 CPC, by way of explanation, the transferee may apply for execution of the decree.

A bare perusal of the above explanation of Order 21 Rule 16 CPC inserted by Amendment Act (104 of 1976) makes it very clear that transferee of subject matter of the decree can apply for execution of the decree without separate assignment of a decree. However, the Court below has not considered these aspects while passing the impugned order dated 19.9.2011. As such, present petition is accepted and the impugned order dated 19.9.2011 stands set aside.

(Shekher Dhawan)
Judge

February 23, 2016

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