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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.4762 of 2016

Date of Decision: 28.07.2016

Hari Singh (deceased) through LRs

.....Petitioner

Vs

Basheshar Nath (deceased) through LRs and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Nitin Rampal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Plaintiff-petitioner in a suit for declaration has assailed order dated 31.05.2016 passed by Additional Civil Judge (Sr. Divn.), Guruaharsahai, whereby application of the petitioner for withdrawal of warrant of possession was dismissed.

[2]. Plaintiff filed suit for declaration with consequential relief of permanent injunction in respect of land measuring 16 *Kanals* comprised in Khewat No.2, Rect. No.116, Killa No.18 (8-0), 23 (8-0) situated in revenue estate of village Sohangerh Ratte Wala, Tehsil Jalalabad, District Ferozepur. Respondent Bisheshar Nath filed a counter claim in the suit for possession and *mesne* profits. The evidence of the plaintiff was closed by

order and he was proceeded against *ex parte* before the trial Court. The counter claim of the defendant was allowed. The main suit of the plaintiff/petitioner was dismissed vide judgment and decree dated 25.03.2011. The counter claim of the defendant remained unrebutted and unchallenged by the plaintiff/petitioner-herein. Since the plaintiff/petitioner was proceeded against *ex parte* in the trial Court, therefore, the decree of counter claim was a lawful decree. The claim regarding *mesne* profits was answered on the premise that the plaintiff-petitioner was in possession of the suit property and had not paid anything to the counter claimant. The counter claimant was held entitled to Rs.10,000/- per acre per year as *mesne* profits from the date of filing of the counter claim till delivery of the possession of the land to the counter claimant. The counter claimant was also directed to pay the court fee for the decretal of his counter claim within stipulated period, failing which it was observed that counter-claim would be deemed to be dismissed. Plaintiff-petitioner was directed to hand over the possession of the land to the counter claimant within specified period from the date of decree, failing which the counter claimant was held entitled to approach the court for execution of his counter claim.

[3]. Sukhjinder Kaur wife of Wariyam Singh son of Hari Singh (deceased) plaintiff challenged the judgment and decree

dated 25.03.2011 passed by Civil Judge (Jr. Divn) Ferozepur before the lower Appellate Court. The said appeal was dismissed by the lower Appellate Court vide judgment and decree dated 04.05.2015. Sukhjinder Kaur has approached this Court by filing a Regular Second Appeal which is statedly pending.

[4]. Petitioner alleged that the suit land was a part of land holding of big landowner which was surplus. The land was declared surplus in the year 1964 by Collector, Agrarian. Petitioner further alleged that he cultivated the suit land and was in adverse possession of the same. His possession was open and adverse which has ripened into ownership. Petitioner further alleged that the defendants did not make State as necessary party in the counter-claim and he claimed his ownership over the suit land on the basis of registered sale deed executed by one Subhash Chander. A story was also propounded in respect of Kundan Lal and Subhash Chander having obtained a decree dated 02.01.1992 fraudulently from the Court. However, said story, in considered opinion of this Court is not relevant as the plaintiff himself was proceeded against *ex parte* before the trial Court.

[5]. Now in execution proceedings, an application was moved by judgment debtor Sukhjinder Kaur wife of Wariyam

Singh son of Hari Singh original plaintiff for recalling of order dated 17.05.2016 passed by the trial Court in execution petition on the basis of judgment and decree dated 15.09.2014 passed by the trial Court and pendency of Regular Second Appeal pending before this Court. The objections were treated by the executing Court and were dismissed vide the impugned order.

[6]. I have heard learned counsel for the petitioner to some extent.

[7]. Admittedly, the decree of the trial Court where the petitioner was proceeded against *ex parte* was only challenged by Sukhjinder Kaur that too unsuccessfully before the lower Appellate Court, however Regular Second Appeal is statedly pending. The passing of decree dated 15.09.2014, wherein Additional Civil Judge (Sr. Divn.) Ferozepur held the property to be joint and judgment debtor being the co-sharer was held to be having interest in the suit land.

[8]. Learned counsel for the petitioner contended that Sukhjinder Kaur had purchased 16 *Kanals* of land from Mohinder Partap, who was in possession of the same since the date of its purchase. He further argued that since the judgment debtor was co-sharer and, therefore, he had all the right to enjoy the property which was not partitioned. The objections filed by the judgment debtor were inter-party objections and were not

required to be dealt with by adopting regular procedure like framing of issues and taking of evidence thereupon. It is a settled principle that the executing Court cannot go beyond the decree. There was no stay operating in the pending Regular Second Appeal and there was no stay against the judgment and decree dated 25.03.2011.

[9]. The summons issued to Hari Singh were received back with the report that he had already died. Sukhjinder Kaur judgment debtor was duly served, who was proceeded against *ex parte*. The objections filed by judgment debtor Sukhjinder Kaur were without setting aside *ex parte* proceedings against her. The objections were primarily based on the judgment and decree passed by the trial Court in some different proceeding on 15.09.2014, wherein the alleged fact regarding jointness of property was held. The executing Court held that in the said judgment and decree dated 15.09.2014 neither the judgment debtor of the present execution, nor his legal representatives, and nor the decree-holder was party to the said litigation. From the *jamabandi* on record, Bisheshar Nath was shown to be owner and judgment debtor Harpal Singh was shown in possession of the same. Since the counter claim filed in the suit was decreed on behalf of Bisheshar Nath for possession along with *mesne* profits and there was no stay operating in Regular

Second Appeal, therefore, the objection filed by the judgment debtor in its very nature was not maintainable.

[10]. The executing Court cannot go beyond the decree dated 25.03.2011 wherein counter claimant was held owner of the land and was entitled to possession along with *mesne* profits. The filing of objection in the execution was rightly held by the trial Court to be an effort to delay. The warrants of possession issued by the executing Court was a natural consequence of lawful decree and, therefore, this Court is fully satisfied that the objections filed by the plaintiff/petitioner before the executing Court were nothing, but to delay the lawful execution of judgment and decree dated 25.03.2011.

[11]. In view of above, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

July 28, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No