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

CR-5543-2015

Date of Decision : May 25th, 2016

Lal Singh

.... Petitioner

Versus

Gurmail Singh alias Gurmeet Singh and another Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Deepak Bhardwaj, Advocate,
for the petitioner.

Mr. Vivek Gupta, Advocate,
for respondent No.1.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 16.08.2012 [Annexure P/4] passed by the Executing Court whereby Objection petition filed by Judgment Debtor No.1 [respondent No.1 herein] was accepted holding that the Judgment Debtors are liable in equal shares despite the fact that there is no such finding to that extent and also for setting aside order dated 4.2.2015 [Annexure P/7] whereby application filed by the petitioner for issuance of directions to J.D. No.1 to make the payment, was dismissed.

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2. Facts relevant to the present controversy; that a suit for recovery was decreed by the Court below and Execution Petition was pending. Objections were raised by Judgment Debtor No.1, Gurmail Singh that he was not liable to make the payment of entire decretal amount, rather the pronote and receipt were obtained in equal shares by both the Judgment Debtors and as such, J.D. No.1 was liable to make payment of one half of the decretal amount and that amount has already been deposited by him and thus, JD No.1 is not liable to make any payment.

3. Learned counsel for the petitioner submitted that the Executing Court has proceeded beyond the jurisdiction because there was no such decree that the Judgment Debtors are liable to make payment in equal shares. Rather, the suit of the plaintiff for recovery was decreed against the defendants. The liability was intended to be fastened upon both the defendants and in execution proceedings, both of them are liable to make the payment of entire decretal amount. On this point, reliance was placed upon the judgment from Co-ordinate Bench of this Court in **Om Parkash son of Shaitan Singh Vs. Surender son of Mehar Chand and Ors, 2013 (4) PLR 292** wherein such a view was taken.

4. Learned counsel for the respondent No.1 submitted that earlier both the defendants used to carry on brick-kiln business and that has been closed in the year 2001. Respondent no.1 has already deposited one half share in the year 2012 which is equivalent to his liability on the basis of decree and as such, the petition is liable to be dismissed.

5. Having considered the submissions made by learned counsel for the parties and going through the file, undisputedly, there is nothing in the

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judgment and decree dated 18.3.2009 passed against present respondent that Judgment Debtor No.1 is liable to make the payment of one half of the decretal amount and the remaining one half is to be paid by Judgment Debtor No.2. Both of them were partners in the brick-kiln. It is the case of the petitioner that respondent No.2 has sold the property to respondent No.1 just to avoid his liability.

6. As per view taken by the Coordinate Bench of this Court in **Om Parkash's case [supra]**, a decree holder is entitled to enforce the claim against anyone of the defendants and leave it to the parties to fight amongst themselves to settle issue of contribution to the extent of which the liability could arise. The Executing Court need not fetter itself to divide the liability even at the stage of execution of the decree sought at the instance of the decree holder. The Court below has completely ignored these facts and the basic principle of law that Executing Court cannot go beyond the decree and nothing can be read in-between the lines that the liability of the defendants was to the extent of one half share each and took erroneous view.

7. Resultantly, the present petition stands allowed and the orders dated 16.08.2012 [Annexure P/4] and 4.5.2015 [Annexure P/7] are set-aside. The petitioner is entitled to seek satisfaction of the decree against both the Judgment Debtors.

(SHEKHER DHAWAN)
JUDGE

May 25th, 2016
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