

CR-5652-2015

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

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Date of Decision: 01.03.2016

Madan Lal and others

... Petitioner(s)

Versus

Vinod Kumar and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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: Mr. B.S.Sidhu, Advocate,
for the petitioner.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 02.08.2014 passed by learned Civil Judge (Sr. Divn.) Sri Muktsar Sahib whereby petition moved by the petitioners under Section 114/151 read with Order 47 of the Code of Civil Procedure (for brevity, 'CPC') and Section 44 of the Indian Evidence Act has been dismissed.

In brief, the facts relevant for disposal of the instant revision are to the effect that a decree for recovery was passed against one Kishori Lal on 10.03.1977 which attained finality. One residential house of the petitioners was ordered to be attached on 10.05.1978 which was

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subsequently sold to the auction purchaser on 30.09.1978. Thereafter, the petitioners filed objections under Section 60(1) (ccc) of CPC but the same were dismissed and the appeal against that order was also dismissed on 08.05.1981. Even revision petition filed before this Court was also dismissed on 09.03.2005. The objections were also filed under Order 21 Rule 90 CPC, but the same were dismissed on 23.12.1980. The order dated 23.12.1980 was not challenged and auction sale was made absolute. The auction purchaser filed Execution Application No.270 of 24.03.2006 and warrant of possession of the sold property was issued. The revision petition filed by the applicants/petitioners was dismissed on 19.03.2007 by this Court. Thereafter, in pursuance of warrant of possession dated 01.09.2007, possession was delivered to the decree holder and the execution petition was withdrawn as fully satisfied on 08.12.2007. The petitioners filed an application on 08.12.2007 challenging the aforesaid orders. The application was dismissed on 21.02.2009. Thereafter, the petitioners filed an application for reviewing the order dated 21.02.2009 on the ground that this is the only residential house of the petitioners and the judgment debtor, therefore, it cannot be sold in auction. Learned Civil Judge (Sr. Divn.), Sri Muktsar Sahib after hearing learned counsel for the parties dismissed the said review application vide impugned order dated 02.08.2014. Hence, this revision.

I have heard learned counsel for the petitioners and perused the record.

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Learned counsel for the petitioners contends that the learned trial Court has not taken into consideration the order dated 03.11.2009 passed by this Court in Civil Revision No.6329-2009 which was filed challenging the order dated 21.02.2009. He further contends that the house which was ordered to be attached, is a joint Hindu family property, not the exclusive ownership of the judgment debtor. The impugned order is not sustainable in the eyes of law and is liable to be set aside.

I have considered the contentions of learned counsel for the petitioners.

Perusal of record shows that a civil suit titled as 'Lal Singh vs. Kishori Lal' was decreed on 10.03.1977 and appeal preferred against the said judgment was also dismissed by learned District Judge, Faridkot on 01.10.1977. Thereafter, execution petition was filed in pursuance of the judgment and decree dated 10.03.1977 and residential house of the judgment debtor was attached on 10.05.1978 and subsequently, it was sold on 30.09.1978 to auction purchaser. Objections were filed against the attachment and the same were dismissed upto this Court. Even objections were also filed challenging the auction sale which were also dismissed and thereby sale in favour of auction purchaser was made absolute. Ultimately, the possession was delivered to the decree holder and he withdrew the execution petition as fully satisfied on 08.12.2007. The petitioners filed application on 08.12.2007 challenging the above mentioned orders. The said application was dismissed.

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The petitioners again challenged the order of attachment dated 10.05.1978, sale dated 30.09.1978, order dated 08.05.1981 dismissing the objection petition, order dated 23.12.1980 dismissing the objection petition under Order 21 Rule 90 CPC, the order dated 23.02.2006 issuing the warrant of possession, the order dated 28.05.2007 and the order dated 21.02.2009 to which they have no right as the same have already attained finality. The lower Court has rightly dismissed the review application.

In *Kamlesh Verma vs. Mayawati and Ors.* 2013 (4) CCC 222 (SC), the Hon'ble Supreme Court has laid down following guidelines with reference to the review.

- (a) Review of the earlier order cannot be done unless the Court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (b) An error which is not self evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review.
- (c) It is well settled that the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule-1 CPC.
- (d) It is not the case of the Petitioners that they have

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discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment.

- (e) Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched.
- (f) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

Learned counsel for the petitioners has failed to point out any error apparent on the face of record, therefore, no ground for review is made out. In view of the above discussion, I do not find any illegality or perversity in the impugned order.

At this stage, learned counsel for the petitioner states that CR-6329-2009 was withdrawn due to ill-advice as there was no alternative remedy and he prays that the same may be revived.

Dismissed.

Liberty is granted to the petitioners to seek revival of CR-6329-2009 in accordance with law.

01.03.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge