

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR No. 5982 of 2016(O&M)

Date of decision :03.12.2016

Shiv Dutt

.....Petitioner

Versus

Sukhbiri and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sanjeev Sharma, Advocate
for the petitioner.

Mr. Anil Kumar Rana, Advocate
for the respondent no.1.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred with a prayer that the impugned order dated 25.07.2016 (Annexure A-1) with subsequent and consequent effect be set aside and proceedings in the execution may be stayed.

2. The facts emerging from the revision petition are that the father of petitioner namely Indraj sold the land measuring 7K 14 M to respondent no.1-Sukhbiri vide registered sale deed dated 24.12.2008 for a total sale consideration of ₹ 15,40,000/-. Subsequently, it was found that the said land was already sold by Indraj to Smt. Sunia Devi widow of Brahm Parkash vide registered sale deed dated 06.08.2007. So, respondent no.1 filed a suit for recovery of ₹ 16,06,200/- against the petitioner and respondents no.2 to 5 being the legal representatives of deceased-seller Indraj by raising the plea that as the land in question was already sold to Smt. Sunita Devi, the alienation made by Indraj was illegal and he has no right to sell the land in

question to respondent no.1 and she was entitled to refund of the sale consideration, stamp fees and registration charges.

3. The said suit was contested by the petitioner and perform respondents by taking the plea that the sale deed was executed due to some misunderstanding or oversight. It was further pleaded that a sum of Rs. 16 lacs has already been refunded to respondent no.1 on different dates vide *Bahi* entry Ex.D-2. But, the suit filed by respondent no.1 was decreed by the learned trial Court vide judgment and decree dated 19.12.2014 and a decree for recovery of ₹ 16,06,200/- along with interest at the rate of 12% per annum from 24.12.2008 till realization was passed. As per averments in the revision petition, the said judgment was maintained by the learned Appellate Court. Meaning thereby, the judgment and decree dated 19.12.2014 has attained finality.

4. Respondent no.1 filed the execution petition no.44/15 titled as “Sukhbiri Vs. Shiv Dutt”. In the said execution proceedings, the learned Executing Court has passed the impugned order dated 25.07.2016 which reads as under:-

“Report not received. Now again be issued in the following manner on.

Court Notice 06.08.2016

Sport Notice 19.08.2016

Auction 30.08.2016

Report 09.09.2016”

5. Learned counsel for the petitioner contended that in-fact there was only a financial transaction with Smt. Sunita and the sale deed dated 08.06.2007 was executed by deceased-Indraj only as a security for raising the financial assistance of ₹ 9,80,000/-. He contended that Smt. Sunita has already received back a sum of Rs. 5 lacs from said Indraj and the land in dispute measuring 7K 14M was set free on 01.12.2008 i.e. prior to the

execution of the sale deed dated 24.12.2008 by deceased-Indraj in favour of respondent no.1-Sukhbiri. So, on that date, he was fully competent to execute the sale deed. Thus, he contended that there was no defect in the title of Indraj on the date of executing the sale deed dated 24.12.2008.

6. He further contended that on coming to know all these facts, the petitioner filed a civil suit on 22.08.2016 titled as “Shiv dutt Vs. Sukhbiri and others” to challenge the judgment and decree dated 19.12.2014 which is being executed by respondent no.1 on the ground that on the date of execution of the sale deed dated 24.12.2008, the land was free from all sought of encumbrances and Indraj was competent to sell the land measuring 7K 14M vide said sale deed. The said suit is pending for adjudication. Thus, he contended that the warrant of sale issued by the learned Executing Court is illegal. Consequently, the impugned order dated 25.07.2016 is liable to be set aside and the execution proceedings are liable to be stayed.

7. On the other hand, learned counsel for the respondents contended that the petitioner has directly filed the revision petition before this Court. He has not filed any objection to the execution before the learned Executing Court. He further contended that the decree dated 19.12.2014 passed by the learned trial Court has attained finality as the appeal against that has already been dismissed. He contended that in the written statement filed in the civil suit no. 161 of 2009 titled as “Sukhbiri Vs. Shiv Dutt and others”, it was the stand of the petitioner and perform respondents that the sale deed was executed due to some misunderstanding and oversight. They have also taken the plea that a sum of Rs. 16 lacs was returned to the plaintiff (respondent no.1) in this revision petition on different dates, but

they could not prove the repayment of the aforesaid amount and the suit of the respondent no.1 was decreed for recovery of ₹ 16,06,200/-. He contended that the learned Executing Court cannot go behind the decree. The warrants of sale has been issued to realize the said decretal amount, which does not suffer from any illegality. He further contended that the petitioner was a party to the suit. The separate suit filed by the petitioner to challenge the decree dated 19.12.2014 is not maintainable in view of Section 47 and Order 21 Rule 58 of the Code of Civil Procedure, 1908.

8. I have duly considered the aforesaid contentions.

9. It is the settled principle of law that the Executing Court cannot go behind the decree. This fact is not disputed that respondent no.1 has filed the suit for recovery on the plea that Indraj, the predecessor-in-interest of the petitioner was not having any title to sell the land in dispute to her as the said land was already sold by him to Smt. Sunita Devi wife of Brahm Parkash vide sale deed dated 08.06.2008. Thus, she claimed the refund of the sale price, stamp fees and registration charges. In the written statement filed in that suit, the fact the sale deed was wrongly executed by deceased-Indraj in favour of respondent no.1 was not disputed. It was pleaded that the said sale deed was executed due to some misunderstanding. However, this plea was taken that sum of ₹ 16 lacs has been returned to respondent no.1 on different occasions vide *bahi* entry Ex.D-2. On appreciating the entry evidence/material on record, the suit filed by respondent no.1 was decreed for recovery of ₹ 16,06,200/- along with interest. It is an admitted fact that the appeal filed against that decree dated 19.12.2014 was also dismissed. So, that the decree has attained finality and is now being executed by respondent no.1 by filing the execution petition bearing no. 44/2015. The

warrants of sale of the property of the JD's has been issued in the said execution in order to realize the decretal amount.

10. Learned counsel for the petitioner could not dispute the plea raised by learned counsel for the respondent no.1 that the petitioner has not filed any objection in the execution petition and straightway filed the present revision petition. The filing of the revision petition straightway before this Court without availing the legal remedies available to the petitioner is not legally maintainable. Moreover, as already mentioned, it is the settled principle of law that the Executing Court had no jurisdiction to go behind the decree and to reopen the case.

11. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

12. Thus, the present revision petition having no merits, is hereby dismissed.

03.12.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No