

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

CR No.6060 of 2016 (O&M)

Date of decision : 10.11.2016

Pishora Singh (deceased through LRs) and others

...Petitioners

Versus

Harchand Singh (deceased through LRs) and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

Present: Mr. K.S. Khehar, Advocate for the petitioners.

Mr. Vikas Singh, Advocate and

Mr. Ashok K. Sharma, Advocate for respondents.

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**AMIT RAWAL, J. (Oral)**

The petitioners-Judgment Debtors are aggrieved of the impugned order dated 24.08.2016, whereby application (Annexure P-1) claiming following relief, has been allowed:-

*“Application u/s 151, 152, 153 of CPC for implementation of the order dated 7.12.1993 passed by this Hon'ble Court for the correction of the judgment and decree dated 9.10.1987 passed by the court of Shri H.R. Nohira, Senior Sub Judge, Patiala in Suit No.364-T/8320.5.1982 titled as Harchand Singh Vs. Pishoara Singh and others”*

Mr. K.S. Khehar, learned counsel appearing on behalf of petitioners-Judgment Debtors submits that plaintiffs Harchand Singh and Harpreet Singh filed a suit against Pishoara Singh and his son Balwinder

Singh and Rajpal Singh seeking specific performance of agreement to sell dated 09.06.1978 with regard to 33 bighas and 3 biswas of the land in the year 1982. Similarly Pishoara Singh, his daughter Balbir Kaur and sons Rajpal and Balwinder Singh also filed a Civil Suit No.80 of 1982 against Harchand Singh, his wife, sons Amritpreet Singh and Harpreet Singh for possession of the land measuring 78 bighas 4 bishwas. Both the parties had sought reference of the dispute through the arbitration and Arbitrator pronounced the award on 03.07.1983 and thereafter, vide order dated 09.10.1987, award was made Rule of the Court. During the interregnum, an application was moved on 25.07.1992 for correction in the judgment and decree regarding khasra numbers 528/495/49 (0-18), 537/75 (5-7) measuring 6 bighas 5 marlas and on the basis of the statement suffered by the petitioner, Court, vide order dated 07.12.1993, modified the judgment and decree dated 09.10.1987 by ordering execution of the sale deed on or before 05.01.1994. He submits that sale deed had already been executed and execution application stated to be pending was dismissed as fully satisfied on 19.02.2004 on the basis of statement suffered by one of the Decree Holder namely Amritpreet Singh. Order reads thus:-

*“19.2.2004 Present:- D.H. Amritpreet Singh with Sh.  
Jivitej Singh Adv.  
None for D.H. Harpreet Singh  
J.Ds ex parte.*

*Case called several times during the day. None has  
appeared on behalf of Harpreet Singh D.H.*

*Record of civil filed. D.H. Amritpreet Singh has made  
a statement that the execution application be dismissed as  
fully satisfied qua my claim.*

*In view of the statement, the execution application is dismissed as fully satisfied. File be consigned.*

*Pronounced*

*Sd/- Civil Judge (Sr. Divn.)*

*Patiala”*

He submits that application aforementioned has been moved only on 28.02.2011. However, the amount of sale consideration stood deposited before the Courts below which was ordered to be released on 19.02.2011 i.e. during the pendency of the application and thus application was ex facie barred by law of limitation. In support of his contention, he has relied upon judgment passed by the Madras High Court in *A. Palanivel Chettiar Vs. R. Elumalai 1985 AIR 303 (Madras)*.

Per Contra, Mr. Vikas Singh, learned counsel appearing on behalf of Decree Holder submits that statement as noticed above was only with regard to the one of the Decree Holder Amritpreet Singh. The order under challenge has already been implemented as brought to the notice of this Court on the previous date of hearing i.e. on 19.09.2016. The sale deed has also been executed. Once the judgment debtor has withdrawn the money, he cannot raise the dispute as it is nothing but an Act of aggrandizement, much less, dishonesty. The suits referred to in the revision petition regarding seeking declaration had not been dismissed on merits but for want of prosecution which is reflected from Annexures P-4 and P-5, thus it would not have bearing on the application and thereafter suit aforementioned was withdrawn.

In the application (Annexure P-1), specific khasra bearing No.95 (6-5) has been mentioned. He has handed over the photocopy of the attested copy stated to have been obtained from the Copying Agency of the

concerned Court to verify the aforementioned contentions and thus urges this Court for dismissal of the revision petition.

He submits that sale deed of suit land would be only complete in case khasra Nos.95 measuring 6 bighas 5 biswas is included and, therefore, there is no illegality and perversity.

I have heard learned counsel for parties and appraised the paper book and also case law cited at bar.

Hon'ble Madras Court had occasion to ponder upon the identical fact, whereby the question arose for regarding the modification or amendment of the decree. It has been held that once decree is fully satisfied and discharged and it becomes extinct, the only remedy to get it revived/resuscitated, until and unless there is a scope for it.

It would be apt to reproduce order along with statement dated 07.12.1993, which reads thus:-

*“Present:- Counsel for the parties.*

*Statement of the parties and their counsels recorded and in view of the statement made by them, the execution application is disposed of accordingly. Statement of the parties and counsel will form the part of the order. Parties will be bound by their statement. The execution application be consigned to the record room.*

*Announced*

*Dated:- 7.12.1993                      Sd/- Senior Sub Judge, Patiala*  
*Statement of Rajpal Singh son of Pishora Singh, aged 36*  
*years, resident of Manewal on S.A. with Sh. Gurbux Mehta*  
*Adv. for Pishora Singh, Balwinder Singh.*

*I have no objection in case the application dated*  
*25.7.1992 for the correction of judgment and decree dated*

*9.10.1987 passed by the court Shri H.R. Nohria, SSJ, Patiala be accepted. The clerical error as requested in the application be made accordingly in the judgment and decree. Pishora Singh party is ready to execute the sale deed as ordered by the court i.e. land measuring 33 bighas 3 biswas which will be after amendment of the decree sheet. We are also ready to rectify the earlier sale deed executed by Pishora Singh pertaining to Khasra No.528/495/49 (0-18) 537/75/5-7 measuring 6 bighas 5 biswas. I was the owner of this land but by mistake the sale deed was executed by Pishora Singh. We shall execute the sale deed in terms of judgment and decree of Shri H.R. Nohria, SSJ, Patiala dated 9.10.1987 as modified by the Supreme Court and as corrected by this Hon'ble Court. We shall execute the sale deed on or before 05.01.1994. The payment be made to us from the deposited amount as ordered by Hon'ble Supreme Court vide order dated 16.04.1991.*

*RO&AC*

*Sd/- Rajpal Singh*

*SSJ, 7.12.1993”*

On perusal of the aforementioned order along with statement, once correction had already been sought in the judgment and decree regarding the same very land, no explanation has come forth in moving the same application and seeking implementation. Application is ex facie barred by law of limitation as one of the Decree Holder suffered statement way back in the year 2004 qua its satisfaction whereas application moved is in February, 2011. The alleged unexecutable decree cannot be revived in the manner and mode as indicated above. Prayer sought in the application is not only vague but incomprehensible. No documents showing the alleged defect was annexed with the application i.e. either of the copy of the sale deed etc.

Even no explanation has come forth that order dated 07.12.1993, in its letter and spirit was not implemented. Even no explanation has come forth in not moving application as expeditiously as possible. All these factors have not been taken care of. The provision of Section 152 of the Code of Civil Procedure cannot be pressed into service at the drop of the hat but there are certain parameters. There is limitation for moving application which can be at the best for the period of 3 years by taking the aid of Article 137 of the Limitation Act. All these factors have not been taken care of, therefore, in my view order under challenge is not only perverse, erroneous but also demand of the merit. Application, in my view, is fully misconceived.

For the reasons aforementioned, I am of the view that order under challenge is not sustainable and is hereby set aside.

Revision petition stands allowed.

**10.11.2016**

*pawan*

**(AMIT RAWAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**