

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

CR No.6152 of 2016(O&M)

Date of decision:18.10.2016

Vijay Kumar

....Petitioner

VERSUS

Amarjeet Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Jasuja, Advocate for the petitioner.

REKHA MITTAL, J.

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 23.05.2016 (Annexure P-8) passed by the Additional District Judge, Sirsa whereby the appeal preferred by the respondent/objector has been allowed and the order dated 19.10.2015 (Annexure P-6) passed by the Civil Judge (Junior Division), Dabwali (hereinafter to be referred as 'the executing Court') has been set aside.

Vijay Kumar filed a suit for recovery of Rs.1,58,900/- on the basis of pro-note and receipt dated 03.08.2010 against Nishan Singh son of Jagtar Singh, that was decreed by the trial Court vide judgment and decree dated 11.10.2012. The petitioner filed an application for execution of the decree (Annexure P-2) and in those proceedings, the property that stood in the name of the respondent/objector was attached and ordered to be put to sale for realization of the decretal amount.

Amarjit Kaur – respondent filed third party objections on the plea that she had purchased the land in question from Satyawanti wife of Ashok Kumar vide sale deed No.224 dated 18.04.2014 for a valuable consideration of Rs.86,60,000/-. It is further averred that she is a bona fide purchaser and purchased the property after inspecting the revenue record. After response filed by the decree holder/petitioner and having heard counsel for the parties, the executing Court dismissed the objection petition vide order dated 19.10.2015. However, the appeal preferred by the respondent against the order dated 19.10.2015 was accepted with the findings that no doubt, JD Nishan Singh had sold out his land during pendency of suit to one Smt. Satyawanti vide registered sale deed No.3295 dated 20.06.2011 and she further sold land to the appellant vide registered sale deed dated 18.04.2014 for a valuable sale consideration, there was no relation between JD Nishan Singh and Satyawanti and also no relation between Satyawanti and appellant Amarjit Kaur. It is also an admitted fact that till passing of the money decree in favour of the decree holder, neither the land in question was the subject matter of the suit nor any order of attachment of land in question was passed before passing the decree. JD Nishan Singh was the absolute owner of the land in question and he had already sold the property in favour of Smt. Satyawanti before attachment. Smt. Satyawanti also had a perfect title at the time of sale in favour of the appellant, before the order of attachment, therefore, the contractual obligation must be allowed to prevail over the rights of the decree holder in view of law laid down in **Vannarakkal Kallalathil Sredharan vs. Chandramaath Balakrishnan**, 1990(3) SCC 291. The contention of the respondent/decrece holder that it was a fraudulent transfer to defeat his rights is without any merit because the recovery suit was only for an

amount of Rs.1,40,000/- and nobody is supposed to sell his 46 kanals 3½ marla land to avoid a decree for such a meager amount.

Counsel for the petitioner has not disputed the factual findings recorded by the Court of appeal that land in question was not subject matter of suit for recovery nor the land was attached before judgment under Order 38 Rule 5 of the Code of Civil Procedure, 1908. Even otherwise, if the petitioner wanted to avoid any sale by the JD made during pendency of the suit or prior/subsequent thereto, he has to take recourse to appropriate proceedings in accordance with law. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

OCTOBER 18, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no