

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6830 of 2015

Date of Decision: 26.02.2016

Makhan Singh

... Petitioner(s)

Versus

Kashmir Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Satbir Rathore, Advocate
for the petitioner(s).

Mr. Sanjiv Pandit, Advocate
for respondent No.1.

Shekher Dhawan, J.

Present petition is challenge to the order dated 27.7.2015, passed by learned Civil Judge (Junior Division), Dasuya, whereby application filed by petitioner for framing the issues on the objection petition was dismissed.

Relevant facts of the case that civil suit was filed against father of the petitioner for specific performance of agreement of sale dated 30.7.2003. During pendency of the civil suit, Buta Singh, father of the petitioner died and present petitioner and other legal heirs of Buta

Singh were impleaded as party. As per petitioner, they were minor at that time and were arrayed as party through their mother. However, mother of present petitioner could not appear in the Court and the civil suit was decreed in *ex parte* proceedings. After becoming major, petitioner filed an application under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment & decree and that application was also dismissed for want of prosecution on 29.7.2013. Decree holder filed an execution application and present petitioner filed objection petition and the Executing Court, after considering the application and reply, dismissed the application without framing any issues.

Learned counsel for the petitioner submitted that legal heirs of the judgment debtor are liable for the debts of their predecessor to the extent of estate inherited by them through their predecessor but they are not liable for any other property in their name. On this point, reliance was placed upon the judgment rendered by the Bombay High Court in case ***Madhukar Sagun Karpe v. Institute of Public Assistance 1998 AIR (Bombay) 201.***

Learned counsel for the petitioner also submitted that the judgment which is in between the parties, though relating to the suit property, can be relevant evidence. On this point, reliance was placed upon the view taken by the coordinate Bench of this Court in ***Mahinder Pal Singh and Others v. Prem Kumar and Others 2005(3) RCR (Civil) 828.*** Learned counsel for the petitioner also submitted that in such cases, the Executing Court was required to frame issues and to decide the case after recording of evidence. On this point,

reliance was placed on the judgment rendered by another coordinate Bench of this Court in ***Shree Siya Ram Hanuman Mandir Sabha v. Mahant Ram Dass 2003 (3) RCR (Civil) 749.***

Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that most of the facts are not in dispute and suit for specific performance was only filed against Buta Singh during his life time. Buta Singh died during pendency of the civil suit for specific performance and his legal heirs, which included his widow and his sons, who are present petitioner and proforma respondents before this Court were arrayed as party. Thereafter, legal heirs remained away from the Court and *ex parte* judgment & decree was passed. Subsequently, an application for setting aside *ex parte* judgment & decree was filed by the present petitioner and the same was also dismissed for want of prosecution. The civil suit was decided on merits. Even sale deed has already been executed and at the time of execution thereof, no dispute was raised by the judgment debtor. It is not the case of the objector that the judgment, passed by the Civil Court, was passed on some fraud. Even it has come in evidence before the trial Court in Civil Suit No. 163 of 2006 by way of statement of defendant No.2-Sukhbir Singh, who appeared as DW.1 that land bearing khasra Nos. 45/7, 45/8 & 45/9/1 fell to the share of sons of Buta Singh in partition proceedings and he has no concern with the above khasra numbers. It has also come in the statement of said Sukhbir Singh (DW.1) that sons of Buta Singh had filed suit for partition of joint land in which he was party and partition had already been

effected vide order dated 1.12.2008. As per defendant No.2-Sukhbir Singh, he has no concern with the suit land. The Court below has already taken all these aspects into consideration while passing order dated 27.7.2015 and nothing was required to be decided on the basis of evidence of the parties after framing of the issues and application was rightly dismissed by the Executing Court. It appears that present petitioner just wanted to delay the execution proceedings and the Executing Court did not allow the same by dismissing the application filed by him. There is no illegality in the order under challenge and present petition, being devoid of any merit, stands dismissed.

(Shekher Dhawan)
Judge

February 26, 2016

"DK"