

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

(1) CR No. 8244 of 2010 (O&M)
Date of Decision: March 15, 2016

Sat Pal and others

...Petitioners

Versus

Om Parkash and others

...Respondents

(2) CR No. 6330 of 2011 (O&M)

Tehsildar Sales Kaithal

...Petitioner

Versus

Satpal and others

...Respondents

ORAM:- HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajinder Goyal, Advocate,
for the petitioners in CR No. 8244 of 2010 and
for respondents No. 1 to 3 in CR No. 6330 of 2011.

Mr. Sidharath Sanwaria, DAG, Haryana,
for the petitioner in CR No. 6330 of 2011.

Mr. Som Nath Saini, Advocate,
for all the respondents in CR No. 8244 of 2010 and
for respondents No. 4 to 9 in CR No. 6330 of 2011.

K. KANNAN, J. (Oral)

1. Civil Revision No. 8422 of 2010 is at the instance of the decree-holder, whose execution petition has been dismissed upholding an objection by the judgment debtor that the property belonged to the Rehabilitation Department and the decree obtained for possession has become inexecutable. The grievance of the petitioners is that the very same objection taken by the judgments debtor had been considered in earlier round of litigation brought before this Court at the instance of the judgment

debtors in Civil Revision No. 2422 of 2000. The Court was laying down a plea that the decision taken by the plaintiff/decreed-holder in the absence of the government represented through the Rehabilitation Department will not bind the State and since the State had recognized the defendants as allottees, the allottees could hold back possession in defiance of the decree. The Court rejected the contention and allowed the execution to continue. This was cited by the decree-holders as a point in their favour and to discredit the value of the impugned order allowing for the very same objection to be brought again.

2. The judgment debtors were joined in the proceeding in execution by an application by the State through the Rehabilitation Department under Order 21 Rule 97 of the Civil Procedure Code (for short '**the Code**') to contend that the property had become vested with the Government as an evacuee property and it had been originally allotted to Guranditta Mal. This was cancelled by the subsequent proceedings in the year 1961 itself and the plaintiffs/decreed-holders who claimed rights over the property as heirs at law of Guranditta Mal cannot be executed in derogation of the title of the Government. The contention by the decreed-holder was that the Government itself was not in possession of the property and if they had parted with possession in favour of the judgment debtors, the decree obtained by the plaintiffs cannot be defeated at the instance of the State, which has purported to make a fresh allotment in favour of the judgment debtors. The claim made by the State was originally dismissed and the appeal was also dismissed and the State is in Civil Revision No. 6330 of 2011.

3. I have no difficulty in accepting a plea that a contention which

is raised by the judgment debtors setting up title in the Rehabilitation Department and pleading for inexecutability of the decree had been considered already in Civil revision No. 2422 of 2000 and it shall not be possible to re-open a case decided between the same parties. Learned counsel appearing on behalf of the judgment debtors Shri Saini, however, refers me to certain judgments as holding in his favour to allow for a contention that a decree obtained by a fraud is a nullity and consequently, the decree cannot be put in execution. The learned counsel would refer me to the decision of the Supreme Court in Vaish Aggarwal Panchayat Versus Inder Kumar and others 2015 AIR (SC) 3357 to contend that a judgment and decree could be challenged by way of civil suit on the ground that it was obtained by fraud and such a suit would not be barred by the principle of res-judicata. To my mind, it is stating the obvious that a suit to declare a particular previous judgment as obtained by fraud cannot be barred by the existence of the previous suit itself. The Court was merely expounding simple logic to hold that such a suit would not be barred by Section 11. We do not have a situation of the judgment debtors who were not parties to the previous judgment contending for a position that the decree was obtained by fraud, a situation that was adverted to in Vaish Aggarwal's case (supra). I have no reason to apply the same as governing this case. In Meghmala and others Versus G. Narasimha Reddy and others 2011 (3) Civil Court Cases 6 the Court was considering a case of a claim by the plaintiff under a sale deed, while the defendant was making a claim with reference to the very same property as an agreement holder but who did not, however, have the benefit of the defences available under Section 53-A of the Transfer of Property Act. The defendant was forcing the plaintiff to several round of

litigation adverting to the same document of agreement through several applications and the court was holding that the vexatious attempts of the defendants/Society, who had not admittedly obtained the sale deed and who had also not enforced the agreement through a suit for specific performance, cannot defeat the plaintiff's rights. The Court was holding that even a person in unlawful possession cannot be evicted forcibly and that a mere executive order from the State can not be used to defeat this decree. I find the fact emanating from this case has no parallel to the situation that we confront in the instant case. In S.P. Chengalvaraya Naidu (Dead) by LRs Versus Jagannath (Dead) by LRs and others 1995 (1) PLR 293, the Court was holding that a person who withholds vital document to gain advantage would be guilty of playing fraud on the court as well as on the opposite party.

4. In the instant case, the fraud which is imputed against the plaintiff is that he was setting up a title for himself as an heir to his brother when the brother had lost right to the property. If the defendant was making a claim that he himself was the owner or the plaintiff could not dispossess to him, it had nothing to do with the plaintiff having to disclose any document which he deliberately did not disclose. If the plaintiff was making a claim as heir to his brother, it was fair enough for him to assume that the brother who had obtained some claims against the Rehabilitation Department had allowed that right to be prosecuted against any person other than the State who was in possession of the property. If the plaintiff had not filed a suit against the State and proceeded only against the defendant in possession, the defence of what the defendant must have brought to defeat the plaintiff and non-suit him cannot avail to him at the execution stage. I will find that

there is no case of fraud that could be attributed to the plaintiff, for, a plaintiff who asserts a right in court is entitled to do so on the basis of information that he has and which is material for decision to eject a defendant. Yet another judgment in Hamza Haji Versus State of Kerala 2006 (4) Civil Court Cases 407, is also a judgment where the Court was holding that the judgment obtained by playing fraud would be a nullity. I have already observed that I cannot find a simple suit for recovery at the hands of the defendant to be smeared with a taint of fraud, if the plaintiff has disclosed what was relevant for securing the relief. There was no compulsion for a plaintiff seeking for recovery of possession to plead any more than how he is entitled to better right than the defendants. If the defendants could not fend off such action by securing adequate proof of their better title over the plaintiff, then the consequences of such adjudication must be taken to the logical end.

5. Under the circumstances, I would hold that an objection given by the defendants could not have been entertained again when it was previously disposed of as not competent even in Civil Revision No. 2422 of 2000. Indeed this adjudication itself was preceded by yet another decision when the decree-holder's application for execution was dismissed upholding the contention that the execution was beyond time. In Civil revision No. 562 of 2000, the High Court was holding through its decision dated 30.5.2003 that the execution petition was within time and that the court was bound to execute the same, more particularly in view of the fact that the decree obtained originally at the trial on 16.12.1981 was confirmed in appeal and later re-affirmed in the Regular Second Appeal filed by the judgment debtors. The decree-holder was, therefore, fully competent to put

the decree in execution in the manner it stood against the judgment debtors.

6. In this case, there is a third party intervention that obtained in the proceedings and, therefore, the mere removal of objection from the judgment debtors may not conclude the issue. The State has brought a contention through an application under Order 21 Rule 97 of the Code that its own allotment made to Guranditta Mal had been cancelled on 27.4.1961 and this order had become final. If the plaintiff's source of title is the right obtained by his brother from the Government but that transfer made by the State was cancelled, then the adjudication under Order 21 Rule 97 of the Code cannot result in dismissal of the application filed by the State, unless we have other issues such as incompetence of the State to seek for adjudication or the non-maintainability of the application brought at the instance of the State. Under Order 21 Rules 97 to 100 of the Code, an adjudication that requires to be made is truly in the nature of a civil suit. An obstruction by a third party needs to show no more than the fact that the property which is claimed by such third party is not really the property of the decree-holder or which he could lay a lawful proceedings in execution. The language of Order 21 Rule 97 of the Code has been construed in such a way that a decree in execution could be resisted or obstructed by any person who causes a threat to a decree-holder from recovery of possession. The decree holder in such a case may make an application to complain of such resistance or obstruction and for its removal or the third party may move an application to invite an adjudication of title. This position has been explained in Shreenath Versus Rajesh (1998) 4 SCC 543 that all questions in the application shall be determined by the executing court and a third party need not file a separate suit. An obstruction by a paramount title

owner would perforce require an adjudication to be made and such adjudication will have the effect of a decree under Order 21 Rule 101 read with Rule 103 of the Code. The adjudication, therefore, in this case that has become relevant is whether the property belonged to the State and whether it has a right to persist such an adjudication to be issued in its favour.

7. The learned counsel appearing on behalf of the decree-holders would himself concede that the property belonged to the Government but his contention is that the government had purported to make an allotment in favour of the judgment debtors through a policy that was declared to be illegal by this Court. This cannot really land the plaintiff in any better right, for, if the contention of the decree holders were to be that the State did not have competence to make an assignment or allotment in favour of the judgment debtors, the property stands reverted to the State and the declaration of its right has to follow on a mere reference to admitted facts, namely, of the original vesting of the property in the Rehabilitation Department as a successor to Custodian in whom the property vested under the Evacuee Property Act, 1950 and further fact that a claim made by Guranditta Mal was declined and the Rehabilitation Department had passed an order on 27.4.1961 cancelling the allotment and directing correction to be made in the revenue entries. If the property were to be declared as a property of the State, that adjudication would mean that the decree-holder himself cannot put the property in execution when an obstruction coming from the State which was the paramount title owner and it will be to the State that the plaintiff or the defendant could look to for perfecting their respective claims.

8. As of now, the order passed which is subject of challenge in CR

No. 8244 of 2010 is set aside but I will not give the benefit of further process of execution to the decree-holder in view of the fact that the objection given by the State is formidable. The title of the State is upheld and that would require a decision rendered by the executing court which is subject of challenge in CR No.6330 of 2011 to be set aside and CR No. 6330 of 2011 would require to be allowed.

9. In the ultimate analysis, I hold that the property belongs to the State through its Rehabilitation Department and it will be left to the State to deal with the property in the manner which is appropriate.

10. Both the revisions are disposed of with the above observations.

March 15, 2016
prem

(K.KANNAN)
JUDGE