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

Civil Revision No.7743 of 2016

Date of Decision: 17.11.2016

Balbir Singh

.....Petitioner

Vs

Gurnek Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjeev Kumar Bawa, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 20.10.2016 (Annexure P-6) passed by Civil Judge (Jr. Divn.) Phillaur in execution application vide which objections filed by him were dismissed.

[2]. Petitioner Balbir Singh was defendant in a suit for possession filed by decree-holder Gurnek Singh. The suit was dismissed by the trial Court vide judgment and decree dated 16.09.1997. However in appeal before the lower Appellate Court the judgment of the trial Court was reversed. Appeal was allowed thereby decreeing the suit of the plaintiff against the present petitioner vide judgment and decree dated 20.01.2001.

While deciding the appeal, lower Appellate Court in para nos.12

and 13 held in the following manner:-

“12. The trial Court has dismissed the suit of the plaintiff on two grounds, firstly, that the suit by one co-sharer is not maintainable without impleading the other co-sharers and secondly that the mere suit for possession is not maintainable, without seeking the relief of cancellation of sale deed dated 9.3.88. Gurnek Singh is the co-sharer of the land, in dispute, alongwith his other brothers. The Full Bench of our own High court has observed in Ajmer Singh and others Versus Shamsheer Singh @ Sher Singh and others, 1983 P.L.J. 585 that a co-sharer can institute and maintain a suit for possession against a trespasser in respect of the entire property without impleading the other co-sharers and secure a decree for the same irrespective of his own share therein. The trial Court while deciding issue No.6 has observed that Balbir Singh cannot be held a bonafide purchaser. The plaintiff has taken the plea that the defendant took the possession forcibly. The respondent has not filed cross-objections against the impugned decree dated 16.9.97. Since the trial Court has observed that the defendant is not a bonafide purchaser, it can safely be termed him as trespasser to the land, in dispute. In the light of the ruling referred to above a co-sharer can institute and maintain the suit against a trespasser without impleading the other co-sharers. So, in the light of the ruling referred to above I find that the suit of the plaintiff is not bad for non-joinder of the other co-sharers.

13. So far as the second plea on the basis of which the suit of the plaintiff has been dismissed is that the suit for possession is not maintainable without getting the sale deed cancelled. Admittedly, the plaintiff was not a party to

the sale deed. Hon'ble Mr. Justice R.N. Mittal, Judge, of our own High Court in Sinder Singh @ Amarjit Singh and others versus. Bhora Singh and others 1978 Punjab Law Reporter 409 has observed that the plaintiffs were not a party to the sale deed, therefore, it was not necessary for them to get it cancelled. The similar proposition of law was involved in the said ruling in which the plaintiffs were not a party to the sale transaction and they filed a suit for possession without cancellation of the sale deed. The learned trial Court held that the plaintiffs were not entitled to possession of the suit land till the sale deed was got cancelled but His Lordship has observed that the plaintiffs were not a party to the sale deed and, therefore, it was not necessary for them to get it cancelled. In the light of the ruling referred to above, the suit of the plaintiff for possession without getting the sale deed cancelled as maintainable.”

[3]. I have heard learned counsel for the petitioner.

[4]. The judgment and decree passed by the lower Appellate Court has attained finality as the same was never assailed in Regular Second Appeal. Thereafter decree-holder Gurnek Singh filed execution before the executing Court in which objections were filed by the judgment-debtor/petitioner. The objections were primarily in respect of Will dated 20.11.1970 executed by Kartar Singh from which decree-holder alone could not be treated as exclusive owner of the whole land, rather he was entitled to 1/5th share only. Secondly, the suit was

filed only by the decree-holder without joining other co-sharers.

[5]. Both the objections had already been answered in the main proceedings. Judgment-debtor had no *locus standi* to object execution of decree which had already attained finality. In terms of para no.12 of the judgment of the lower Appellate Court, co-owner had all the right to claim possession of entire joint property on behalf of other co-sharer. Judgment-debtor was not a co-sharer, rather he was a trespasser.

[6]. In view of discussion made by the executing Court, there is no scope for interference in the revision petition. Revision petition is accordingly dismissed.

November 17, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No