In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 890 of 2014

Date of Decision: 02.05.2016

Surinder Kumar and Another

... Petitioner(s)

Versus

Central Bank of India and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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. Sandeep Kotla, Advocate
for the petitioner(s).

Mr. Atul Mahajan, Advocate
for respondent No.1.

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 14.1.2014, passed by learned Civil Judge (Senior Division), Panipat in Execution Petition No. 151/8 of 2013.

Learned counsel for the petitioners submitted that property was purchased by the petitioners from Canara Bank in due process of law. Petitioners are bonafide purchasers. They purchased the suit property through Debt Recovery Tribunal and the sale was duly confirmed. Subsequently, petitioners came to know that some execution proceedings are pending before the Court and moved an application before the Court of learned Civil Judge (Senior Division), Panipat and raised objections on 22.3.2013 and the objections of the petitioners were dismissed vide order dated 14.1.2014 and the same is liable to be set aside in view of the provisions of Order 21 Rule 101 CPC.

Learned counsel for respondent No.1 submitted that petitioner No.2 has already sold his share in the property. Respondent No.1-bank has charge on this property. More so, suit for permanent injunction was filed by the present petitioners and the Court below has passed the order after considering all these submissions and present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that most of the facts are not disputed that petitioners had purchased the suit property in public auction on 26.12.2005. The auction was conducted by the Debt Recovery Tribunal, Chandigarh. Thereafter, sale certificate dated 5.5.2008 was issued in favour of the present petitioners and on the basis of the said auction and sale certificate issued in favour of the petitioners, both of them are bonafide purchasers of the suit property.

The fact is not disputed to the extent that suit property was earlier mortgaged in the year 1987 for credit limit of ₹ 1,83,000/- and that way, respondent No.1 was having charge on the suit property.

As per provisions of Order 21 Rule 101 CPC, the Executing Court was required to decide the controversy after taking into consideration all these facts. Relevant Order 21 Rule 101 CPC reads as under:-

> *"**101. Question to be determined**— All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."*

The above provision makes it ample clear that objections filed by the petitioners were to be treated like a suit and all the pleas taken by the petitioners as well as respondent No.1 were to be decided by the learned Executing Court and the Court below failed to adjudicate the matter in accordance with law.

Accordingly, the present petition is hereby accepted and impugned order dated 14.1.2014 is hereby set aside. Learned Executing Court is directed to decide the controversy as per provisions of Order 21 Rule 101 CPC.

(Shekher Dhawan)
Judge

May 02, 2016
"DK"