

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

**CR No.4614 of 2003 (O&M)
Decided on: 22.10.2016**

Sita Ram

....Petitioner

Versus

Prabhu Lal and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Sita Ram – Petitioner in person.

Mr. Sachin Mittal, Advocate
for respondents No.2 to 5.

REKHA MITTAL, J. (Oral)

The present petition has been directed against orders dated 11.01.2003 passed by the Additional Civil Judge (Sr. Division) Nuh and dated 28.08.2003 passed by the Additional District Judge, Gurgaon whereby application filed by the petitioner under Section 47 of the Code of Civil Procedure (in short 'CPC') was dismissed by the Executing Court and the appeal preferred by the petitioner against the order dated 11.01.2003 was dismissed on the ground of non-maintainability with the findings that revision may be filed before the High Court against the impugned order.

The petitioner has submitted that he filed a suit for declaration in order to challenge the judgment and decree dated 15.12.1981. The suit was decreed by the trial Court and the judgment and decree passed by the trial Court was affirmed in appeal by the First Appellate Court. Prabhu Lal filed regular second appeal No.4642 of 2000 titled '*Prabhu Lal vs Laxmi and others*' that was allowed by this Court vide judgment dated 02.08.2006. The judgment passed by this

Court in the aforesaid RSA became subject-matter of Civil Appeal No.4650 of 2007 '*Sita Ram vs Prabhu Lal and others*' and the same was allowed by Hon'ble the Supreme Court of India on 10.12.2014 vide order Annexure A-1 appended with CM No.20863-CII of 2015. It is argued that the Executing Court dismissed the application filed by the petitioner primarily on the ground that regular second appeal is pending before the High Court and therefore, the matter is *sub judice*. The impugned order dated 11.01.2003 cannot be allowed to sustain in the light of subsequent events that decision rendered in the aforesaid RSA has been set-aside by Hon'ble the Supreme Court of India and as a result, the judgment and decree passed in favour of the petitioner stands revived. It is further submitted that order passed by the Executing Court may be set-aside and the matter may be remitted to the Executing Court for decision afresh, in accordance with law.

Counsel for respondents No.2 to 5 has not disputed the facts on record that decision of this Court in RSA No.4642 of 2000 on 10.12.2014 has been set-aside by Hon'ble the Supreme Court. However, it has been argued that application filed by the petitioner before the Executing Court sans merits and is otherwise liable to be dismissed.

I have heard the petitioner in person and counsel for respondents No.2 to 5 and perused the records with the able assistance rendered by Mr. Sachin Mittal, Advocate (counsel for respondents No.2 to 5).

The Executing Court dismissed the application filed by the petitioner with the observations recorded in para 11 of the impugned

order and a relevant extract therefrom reads as follows:-

“From the perusal of the application and the judgments available on the file, the applicant and respondents are brothers and co-sharers in the suit land and final decision regarding fate of appeal filed before the Hon'ble High Court is yet to be decided. The respondents are not interfering into the possession of the applicant – DH over the suit land as admitted in their reply and during the course of arguments. Moreover, the alienation of the suit land is already stayed by the Hon'ble High Court. If the applicant is having an apprehension from the respondent, he can move before the competent court of jurisdiction to safeguard to his legal right.”

As the matter pending before this Court in regular second appeal already stands decided and the judgment passed by this Court has been set-aside by Hon'ble the Supreme Court of India thereby affirming the judgment and decree passed by the trial Court upheld by First Appellate Court, order dated 11.01.2003 passed by the Executing Court cannot be allowed to sustain and liable to be set-aside. However, the Court of appeal has rightly held that the order passed by the Executing Court is not an appealable order and the same may be challenged in appropriate proceedings before the High Court. In this view of the matter, no fault can be found in the order dated 28.08.2003 passed by the Court of appeal.

In view of the above, the order passed by the Executing Court dated 11.01.2003 is set-aside and the matter is remitted to the Executing Court for decision of the application filed by the petitioner under Section 47 CPC afresh, in accordance with law after providing an

opportunity of hearing to all affected parties. The petitioner and respondents No.2 to 5 through their counsel are directed to appear before the Executing Court on 29.11.2016.

Disposed of accordingly.

22.10.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No