

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

**Crl. Misc. No.M-554 of 2015
Date of decision : 25.02.2016**

Kuldeep Singh

.....Petitioner(s)

Versus

Rajwinder Kaur and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Rakesh Kumar, Advocate
for the respondents.

ANITA CHAUDHRY, J(ORAL)

The petitioner is challenging the order dated 27.11.2014, passed by Additional District Judge, Kapurthala as well as the subsequent proceedings including the order dated 12.12.2014.

Recapitulating the facts necessary for disposal of the petition first. The parties were married in 1993. They have two children. A petition was filed under Section 125 Cr.P.C. by the wife seeking maintenance, which was allowed from the date of application. Aggrieved by the same, the husband preferred a revision. The matter was referred to the Permanent Lok Adalat by the

Revisional Court, wherein a compromise was effected. The husband agreed to transfer half share of his property in which he was a co-sharer in the name of his wife and son in equal shares. Its vacant possession was to be delivered by 15.05.2014, after the crop was harvested. It was also agreed that the wife would not alienate her share and she could enjoy the fruits during her life time. It was agreed that her share would pass on to the son after her death. The parties also agreed to withdraw all the cases. It was also agreed that in case, the husband failed to transfer the land by the agreed date then he was liable to pay the maintenance amount as awarded by the Court below and in addition a sum of Rs.5 lacs as compensation to the wife. Both the parties agreed to remain bound by the statements. The Lok Adalat passed an order and in the end saying that in case any party failed to comply with the compromise, the other party was entitled to get the revision revived.

The husband claims that he had got the mutation entered in the revenue record which was entered on 16.06.2014 and was reflected in the jamabandi but he came to know that the suit filed by the wife and the petition under Section 125 Cr.P.C. had not been withdrawn and the wife had not complied with the terms of compromise. The petitioner claims that he filed an application before the revisional Court on 13.07.2014 seeking restoration of the revision petition and the Court had summoned both the parties and the matter

was kept pending for consideration and till then the order of the Court below was stayed.

The petitioner has further pleaded that while the application was pending consideration, the wife approached the same Court for execution of the order dated 12.04.2014 and the Additional District Judge directed the petitioner to transfer his half share situated in different villages and hand over possession to the decree holder by 05.12.2014. Petitioner has pleaded that when his application for revival of the revision was pending, the Court could not have ordered delivery of possession and the compromise was conditional and if the parties had failed to abide by the terms, the only remedy was for revival and for decision on merits and as the wife had not complied with the conditions of the agreement, she was the defaulting party.

Notice of the petition was given to the respondent. The co-ordinate Bench on 08.01.2015 had stayed the operation of orders Annexure P-5 and P-6.

Reply was filed by the respondent and it was pleaded that the petition was not maintainable and a award had been passed by the Lok Adalat which could not be challenged before any Court. It was pleaded that the petitioner had failed to comply with the order and the possession of the land was not delivered up to 15.05.2014. It was pleaded that no transfer deed was executed and the petitioner

had not complied with the order and he had filed an application for restoration of the revision petition, thereby resiling from the compromise. It was pleaded that the father had disowned his son and daughter through a publication made in the newspaper.

I have heard both the sides.

The counsel for the petitioner contends that the petitioner had made a statement before the Permanent Lok Adalat agreeing to certain conditions and the petitioner had taken steps and he had referred to the Jamabandi, copy of which was placed on record. It was urged that the wife did not take any steps for withdrawal of the suit and there was a stay order in operation. It was urged that the husband had taken the necessary steps and therefore the mutation was entered and the mutations are not sanctioned on the same day and he had taken steps which were required to be taken. It was urged that there was an order of status quo of 30.08.2012 in the civil suit and he could not have done anything till the status quo order on the land was vacated or withdrawn. It was urged that two petitions had been filed by the wife, which were to be withdrawn. It was further urged that since the respondent had failed to withdraw the cases, therefore, he had filed an application for revival of the revision as that was the order which was passed by the Permanent Lok Adalat but the same Court in the execution petition has ordered delivery of possession of the property which could not have been done and the

application for execution of the award could not have been filed till the disposal of the revision.

The submission on the other hand was that the petitioner had agreed to transfer land and the condition was that the possession was to be delivered up to 15th May, 2014 and on the case his failure, he was to comply with the orders of payment of maintenance and additionally Rs.5,000/- as fine, besides Rs.25,000/- in cash and the petitioner did not transfer the possession nor has paid the amount and therefore, they had approached the Court for execution of the award and the award by the Permanent Lok Adalat cannot be challenged in the proceedings filed under Section 482 Cr.P.C. It was urged that Annexure P-2 is not the correct translation. The counsel was asked to file the translation which has been filed. Reliance was placed on ***K.N. Govindan Kutty Menon Vs. C.D. Shaji (2012) 2 SCC 51, Balwinder Singh Vs. State of Punjab 2000(1) PLR 352, V. Chandrasekaran and anr. Vs. Administrative Officer and Ors. 2013(4) SCC (Cri) 587, Rashpal Singh Bahia and others Vs. Surinder Kaur and others 2008(2) PLR 375, Jugal Kishore Vs. State of Rajasthan 1998(2) RLW 877 and Kuldeep Singh Vs. Rajwinder Kaur and others in CRM-M-554-2015.***

In order to examine the issues raised by both the sides, it is necessary to reproduce the translated version of the statement given by Kuldeep Singh and Rajwinder Kaur produced by the petitioner. It reads as under:-

Statement of Kuldeep Singh s/o Ajit Singh:-

Stated that today in the court in the presence of respectable persons, a compromise has been got effected between me, my wife, children i.e. wife Rajwinder Kaur and Children Lakhwinder Singh and Sandip Kaur. As per the compromise, the land which is in my name in Miani Bakarpur and Village Dhilwan, Tehsil Dhilwan, District Kapurthala and which is in my share and out of the total land, 1/2 of the share be transferred in the name of my wife namely Rajwinder Kaur, son Lakhwinder Singh and regarding the same, I have no objection and from 1/2 share, if my wife and my son will become the owner of the same and from the said 1/2 share, the 1/4th share, which has been transferred in the name of my wife and my wife will have no right either to sell or to transfer the same, but she will be entitled to enjoy the fruit of the produce and will take loan from the bank. After the death of my wife, my son Lakhwinder Singh will be the full fledged owner of 1/4th share. After harvesting the crop standing in 112 share land, I will be bound to give the possession of the same upto 15th May 2014 to my wife and son. If I will not transfer the ownership of 112 share of my land upto 15th May 2014 in the name of my wife and son, then as per the order of the court, the maintenance, which is to be paid by my wife, I shall be bound to pay the same and I am also bound to pay Rs.5,00,000/- as fine and my wife will have the right to accept the same. Apart from that I shall be bound to pay Rs.25,000/- in cash to my wife. Apart from that a case under section 125 Cr.P.C. which has been got filed by my wife in the court and the same is still going and she will be bound to take back the same. One separate Civil Suit, which has been filed by my son and daughter in the court regarding to take share in the land, which is going in the court of Civil Judge (Sr. Div.) and in that case while producing the said compromise in the case and while giving statement, the case be got decided. The land which is in my name in village Miani Bakarpur and Village Dhilwan and out of the same after giving 112 share to my wife and my son, the remaining 112 share, which remained in my name and out of same, I will be the full owner in possession of 1/4th share and as per my need, I can use the same

and the remaining 1/4th share, which is there in my name and I have no right either to sell or to transfer the same and the same 1/4th share after my death will be got transferred in the name of my son. I have right to get loan from this land from the bank and the loan, which I had taken on the afore-stated land and I shall be bound to repay the loan amount.

Regarding any share of my aforesaid land, I have not made any agreement to sell with any other person and the advertisement regarding disowning of my son and daughter, which has been given, the said dis-owning be treated as cancelled and my wife and children will have the right to live in the said house. If I will sell of the house, then I will be bound to make the arrangement of residence for my wife and children.

Statement of Rajwinder Kaur w/o Kuldeep Singh:

Stated that I with the efforts of Lok Adalat has got compromise the matter with my husband and regarding the same, I have heard the statement, which has been given by me. My daughter Sandip Kaur who is minor and being heir, I found correct the aforesaid compromise. As per the compromise, the cases, which we have filed against Kuldeep Singh and we shall be bound to take back the same as per the compromise and the civil suit, which has been filed by my children against my husband and we are bound to decide the same as per the compromise. From today onwards, we are having no right to file any type of case against my husband Kuldeep Singh. As per compromise, I will not liable to get any future maintenance or remaining balance and nor my daughter namely Sandip Kaur will have any right to file any type of case of maintenance or civil suit against Kuldeep Singh. The remaining amount which is lying pending in the case of Section 125 Cr.P.C., the same be treated as over and no, there are no dues left.

The Permanent Lok Adalat after referring to the statements made by both the sides referred to the statement and passed the order. It reads as under:-

“In view of these statements of the revisionist as well as respondent no.1, which are duly endorsed by their respective counsel, the present revision petition stands disposed off accordingly in terms of aforesaid statements of the parties. The parties will remain bound by their statements. However, it is made clear that as per terms of compromise effected between the parties, if a party fails to comply with the terms of said compromise, the other party will be entitled to get revived the present revision petition. Record of learned lower court, alongwith copy of the order, be returned back immediately. The revision petition file be consigned to the record room.”

The petitioner claims that the wife had not withdrawn the cases that were filed by her and her son. He also states that there was a stay order which was not got vacated and nor the suit was withdrawn and he on his part had approached the revenue authority and the mutation was sanctioned and the share was transferred in the name of the son and he had taken all the steps required of him taken but the wife did not withdraw the suits, therefore, in terms of the order passed by the Permanent Lok Adalat he had approached the Court for revival of the revision in which notice had been given by the same Court and in the presence of the parties the operation of the order dated 21.11.2012, passed by the Magistrate was stayed.

A perusal of Annexure P-6 shows that the wife had filed an application for execution of the award. The order passed on the petition reads as under:-

“Vide order dated 27.11.2014, the JD was directed to transfer 1/2 share of his property/land falling in both villages and to

hand over the vacant possession to the DH till 5.12.2014 but till date JD has not transferred his 1/2 share in favour of DH.

Today, learned counsel for DH has moved an application for issuance of warrants of possession as per the terms of the award dated 14.4.2014 and order dated 27.11.2014. In view of said application, JD is further directed to transfer 1/2 share of his property in favour of his DH till 5.1.15.

It is further directed that as and when Rajwinder Kaur will be getting the possession of the suit property in question only then she will give the statement in the other court regarding withdrawal of pending cases against her husband i.e. JD namely Kuldeep Singh. If there will be any lapse on the part of JD in transferring his 1/2 share in favour of DH till the next date of hearing 5.1.15, then warrant of possession will be issued in favour of DH.”

A perusal of the statement made by the wife reproduced above would show that the wife had agreed to withdraw the cases filed by her and her children against her husband. The matter for revival of the application is pending before the Court. While it was pending, the Executing Court should not have passed any order and should have stayed its hand. The execution application was pending before the same Court. The parties were represented by the same counsels. On one hand it had given notice to the wife on the revival application but the Executing Court passed orders in the execution petition. Since the matter of revival is still pending, no finding can be given by this Court. It is for the Court below to adjudicate the issue. The petition is disposed of with the directions to the revisional Court to decide the application filed by the petitioner and till the decision of

the application, there would be stay on the orders Annexure P-5 & Annexure P-6 passed in the execution petition.

25.02.2016
sunil

(ANITA CHAUDHRY)
JUDGE