

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

1. FAO No.2745 of 2009 (O&M)
Date of decision : 29.04.2016

Shukla Devi and others

...Appellants

Versus

Pratima and others

...Respondents

2. CR No.5486 of 2015 (O&M)
Date of decision : 29.04.2016

Om Parkash (deceased) through LRs and others

...Appellants

Versus

Jai Parkash Kharbanda (deceased) through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Ms. Gurdeep Kaur, Advocate for the appellant
(In FAO No.2745 of 2009)

Mr. C.M. Munjal, Advocate for the petitioners
(In CR No.5486 of 2015)

Mr. Sandeep Jasuja, Advocate for respondent Nos.1 to 3

(In FAO No.2745 of 2009 & CR No.5486 of 2015)

Mr. R.K. Girdhar, Advocate for the respondent No.4
(In FAO No.2745 of 2009) &
for respondent No.3 (In CR No.5486 of 2015)

Mr. Padamkant Dwivedi, Advocate for respondent No.5
(In FAO No.2745 of 2009) &
for respondent No.4 (In CR No.5486 of 2015)

AMIT RAWAL, J.

This order of mine shall dispose of two cases i.e. FAO No.2745 of 2009 titled as Shukla Devi and others Vs. Pratima and others and CR No.5486 of 2015 titled as Om Parkash (deceased) through LRs and others Vs. Jai Parkash Kharbanda (deceased) through LRs and others.

The facts leading to the filing of the instant appeal are that appellants assailed the impugned order dated 23.03.2009, whereby objection has been filed while invoking the provisions of Section 34 of the Arbitration and Conciliation Act for setting aside of the certain portion of the award dated 02.12.1996. The controversy revolves around the estate of Amar Nath who died in the year 1985 and was succeeded by his four sons i.e. Om Parkash, Sat Parkash, Som Parkash, Jai Parkash. Som Parkash pre-deceased Amar Nath. Amar Nath owned numerous properties in order to settle the controversy between the parties, all the sons agreed for referring the matter to the panel of Arbitrators and accordingly arbitration agreement vide writing on 08.09.1996 signed by Om Parkash, Sat Parkash, Jai Parkash whereas name of Ashish Kumar was also mentioned in the agreement but his signature was never obtained. The Arbitrator passed the award dated

02.12.1996, whereby individual properties of sons of Amar Nath has also been included whereas matter was referred only with regard to estate of deceased Amar Nath. Respondents moved application for making award rule of the Court but the same rejected vide order dated 08.09.1999 in view of promulgation of the new Act i.e. Arbitration and Conciliation Act, 1996. After expiry of 3 ½ years, Jai Parkash filed execution application seeking execution of the award dated 02.12.1996.

Mr. Kanwaljit Singh, learned Sr. Advocate assisted by Ms. Gurdeep Kaur, Advocate for the appellant submits that as per the award, property mentioned at Sr. No.5 i.e. residential house No.217, Ambika Vihar, Delhi owned by Om Parkash was/is not the property owned by Amar Nath and the property mentioned at Sr. No.8 i.e. four shops in camp area in Malout was owned by Sat Parkash. The aforementioned property have also been divided amongst the siblings i.e. sons of Amar Nath. This aspect has totally been ignored by both the Courts below.

Revision petition has been filed against the order of the Executing Court, whereby warrant of possession have been issued for taking the possession of the individual property of Om Parkash and Sat Parkash.

Mr. Sandeep Jasuja, learned counsel appearing on behalf of respondent Nos.1 to 3 in FAO No.2745 of 2009 & CR No.5486 of 2015 and Mr. R.K. Girdhar, Advocate for the respondent No.4 in FAO No.2745 of 2009 & for respondent No.3 in CR No.5486 of 2015 and Mr. Padamkant Dwivedi, Advocate for respondent No.5 in FAO No.2745 of 2009 & for

respondent No.4 in CR No.5486 of 2015 urges that Om Parkash and Sat Parkash suffered statement before the Arbitrators that the property alleged to be individual property self-acquired was actually purchased out of the joint funds. It is in these circumstances, the Arbitrators included the aforementioned properties and passed the award thereon. No documentary evidence has been placed on record to show the title of the property, in essence, the appellants are estopped to raise such plea as no objection has been filed under Section 34 of the Act. Objections have been filed only when the execution application was filed, therefore, the present appeal is not maintainable.

I have heard learned counsel for the parties and appraised the paper book.

The purpose of referring the dispute to the Arbitrator is to prevent mis-carriage of justice and impart justice amongst the brothers or effected parties in dispute. Amar Nath was owner of the number of properties situated in Malout, District Muktsar Sahib but the fact remains that the property mentioned at Sr. No.5 and 8 belongs to Om Parkash and Sat Parkash. During the course of hearing, copy of the allotment letter of House No.217, Ambika Vihar, Delhi at Sr. No.5 has been shown whereby perpetual lease deed on behalf of Delhi Administration has been executed on 18.03.1978/31.08.1978 in favour of Om Parkash Verma son of Amar Nath situated in Ambika Cooperative House Building Society Limited. The reference to the alleged statement suffered on behalf of Om Parkash before the Arbitrators does not carry any weight. Om Parkash did not suffer

statement on oath, much less, gave undertaking. The notes prepared by the Arbitrators does not carry any authentication. The siblings were alive to the situation that reference to the Arbitrator was made only with respect to the properties of Amar Nath and not in respect of individual property acquired from their own funds. No evidence has been produced on record to the contrary that the property mentioned at Sr. No.5 belong to Amar Nath or had been purchased out of the joint funds. Assuming for an arguments sake, though not admitting that the real owner was Amar Nath and Om Parkash was name lender then such transaction was benami and for that, certain evidence was required to be lead. Having failed to do so, there is no force and merit in the plea of Mr. Jasuja, and other in this regard.

Keeping in view the aforementioned facts and circumstances, the award of the Arbitrator dated 02.12.1996 is hereby modified. Property mentioned at Sr. No.5, details of which has been given as under:-

House No.217, Ambika Vihar, Delhi is taken out of the ambit of the award. Rest of the award of the Arbitrator is accordingly affirmed. The order under challenge is also modified to the aforementioned extent. Impugned order in the revision petition whereby warrant of possession has been issued, resultantly is set aside.

Appeal & revisions stands allowed to the aforementioned extent.

29.04.2016

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(AMIT RAWAL)
JUDGE