In the High Court of Punjab and Haryana at Chandigarh

E.S.A. No. 16 of 2014(O&M)
Date of Decision:3.3.2016

Kamlesh Rani Narang

---Appellant

vs.

Gurdev Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Ish Puneet Singh, Advocate
for the appellant

Mr. Parveen K. Kataria, Advocate
for the respondents

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

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<u>Rekha Mittal, J.</u>

The present appeal lays challenge to order dated 12.3.2014 passed by the Additional District Judge, Moga whereby the appeal preferred against order dated 2.12.2013 passed by the Civil Judge (Junior Division), Moga (for brevity "the Executing Court") dismissing the objection petition preferred by the appellant, has been dismissed.

Gurdev Singh son of Bhajan Singh (hereinafter referred to as "decree holder") filed a suit against Jaswinder Singh son of Kartar Singh for possession by way of specific performance of agreement to sell dated 18.1.1997 in regard to a plot measuring 06 marlas. The suit was decreed by the learned trial court vide judgment and decree dated 22.1.2007 directing the defendant/judgment debtor to execute and register the sale deed within three months, on receipt of balance sale consideration. As the judgment debtor failed to comply with the decree, the decree holder filed an application for execution of the decree and the present appellant filed an objection petition primarily on the ground that she is a bona fide purchaser for value vide registered sale deed dated 20.3.2008. It was also averred that physical possession of the house in dispute was delivered to the objector at the time of sale. She obtained loan from Punjab and Sind Bank Moga on 26.9.2001 and got approved site plan from MC, Moga.

Counsel for the appellant has submitted that the suit property was sold by Sh. Jaswinder Singh on 20.3.2008 after a compromise was effected between the decree holder and the judgment debtor vide written panchayat compromise dated 19.3.2008 whereby the judgment debtor paid an amount of Rs. 1,00,000/- to the decree holder. It is further submitted that the judgment debtor filed an objection petition on the basis of compromise deed dated 19.3.2008 but the same has been wrongly dismissed by the Executing Court. The Appellate Court committed a serious error by holding that as the decree in question is not a money decree, the same cannot be satisfied in the way as pleaded by the judgment debtor on payment of Rs.

1,00,000/-. It is argued that order XXI Rule 2(2) of the Code of Civil Procedure (in short "CPC") deals with payment but also provides for adjustment and the payment or adjustment may be recorded as certified either by filing an application under Order XXI Rule 2 CPC or by way of an objection petition under Section 47 CPC as sub rule (3) of Rule 2 of Order XXI is not applicable to the State of Punjab in view of State amendment whereby sub-Rule (3) has been omitted for the States of Punjab, Haryana and Chandigarh. In support of his contention, he has relied upon judgment of this Court **Gurmit Singh vs. Smt. Sushil Sethi 1979 PLJ 431**.

Counsel for the contesting respondent/decree holder has submitted that the appellant is not entitled to be heard on merits of the appeal as notice of motion was issued only to explore possibility of a settlement. The parties failed to arrive at a settlement and an order to this effect was passed on July 22, 2015. Another submission made by counsel is that as the appellant is not the judgment debtor, she can neither take resort to any such compromise purported to be effected between the decree holder and the judgment debtor nor can she take recourse to the provisions of Order XXI Rule 2 or Section 47 CPC, enabling the judgment debtor to record any payment as certified or file objections against the decree passed by the trial court. It is further argued that the objection petition preferred by the judgment debtor by raising a plea of compromise dated 19.3.2008 has been dismissed and the order has attained finality between the respondents.

In response, counsel for the appellant has submitted that as the appellant has purchased property in question from the judgment debtor, she has stepped into shoes of the judgment debtor, therefore, can raise all the objections which the judgment debtor is entitled to raise being representative of the judgment debtor. For this purpose, he has cited judgment of the Kerala High Court **A.G.M. Constructions Private Limited vs. Shibu Kumar 2010(4)KLT 189.**

I have heard counsel for the parties, perused the records and find no merit in the appeal.

The notice of motion was issued only to explore possibility of a settlement. A relevant extract from order passed on 21.3.2014, reads as follows:-

> "xxx xxx xxx
>
> Notice of motion for 28.7.2014 only to explore possibility of settlement."

The parties could not arrive at a settlement as there was a huge gap between the offer made by the objector-appellant and the counter offer of the decree holder, reflected in the order dated July 22, 2015.

Though notice of motion was issued only to explore possibility of an amicable resolution but still I have heard the parties on merits of the appeal.

The appellant cannot agitate an issue of compromise dated 19.3.2008 as neither he is a party to said compromise nor is competent to assail order dismissing objection petition of the judgment debtor qua compromise that has attained finality. This apart, counsel for the appellant has fairly conceded that in the objection petition filed by the appellant, there is no reference to such compromise between the respondents much less the compromise being the basis for her objecting to execution of the decree passed in favour of the respondent. In this view of the matter, the appellant cannot be heard to say that she was entitled to an opportunity to adduce evidence in order to prove the compromise dated 19.3.2008.

The plea raised by the appellant in regard to recording of payment or adjustment under Order XXI Rule 2 or under Section 47 CPC is misconceived and merits rejection. The appellant did not prefer the objection petition being a representative of the judgment debtor as has been sought to be argued by referring to judgment of the Kerala High Court **A.G.M. Constructions Private Limited's case (supra).**

The appellant has raised the plea that she is a bona fide purchaser for consideration without notice of litigation between the respondents. The plea raised by the appellant has been rightly rejected by the courts below by taking into consideration the provisions of order XXI Rule 102 CPC. Counsel for the appellant has not assailed findings of the courts that a plea of bona fide purchaser is not available to the appellant in view of bar created under Rule 102 CPC. Rule 102 CPC provides that nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for immovable property by a person to whom the judgment debtor has transferred the property after institution of the suit in which the decree was passed or to the dispossession of any such person. As transfer of property in favour of the appellant is after the institution of the suit rather after passing of the decree in favour of respondent No. 1, no error much less illegality can be found in the consistent findings recorded by the courts below rejecting claim of bona fide purchaser.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal is dismissed with costs.

(Rekha Mittal)
Judge

3.3.2016
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