

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ESA-1-2016 (O&M)

Date of decision: 04.01.2016

Maya Devi (now deceased) through her LRs

..... Appellants

Versus

Swaran Kanta (now deceased) through her LRs

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Sukhjit Singh, Advocate for the appellant(s).

RAMENDRA JAIN, J.

By way of instant second appeal, the appellants who are third party objectors in the execution petition against the judgment and decree dated 30.08.1986 passed in Civil Suit No. 74 dated 14.09.1981, have sought setting aside of order dated 20.11.2015, passed by the learned Civil Judge (Junior Division), Ludhiana, whereby their written objections were dismissed and the judgment dated 15.12.2015 passed by the learned Additional District Judge, Ludhiana, vide which their appeal (MCA No. 392 dated 01.12.2015) against the said order was also dismissed.

2. Learned counsel for the appellant-objector(s) argued that in the execution of respondents i.e. the legal heirs of Swaran Kanta, plaintiff against the judgment and decree dated 30.08.1986, the warrants

of possession were issued. In pursuance thereof, the decree-holders came at the spot to take possession. Only then the appellant-objector(s) came to know that warrants of possession were issued against their house having no connection with the aforesaid judgment and decree, because the same was situated in Khasra No. 797 distinct from Khasra No. 791 for which the said decree was passed. Hence, the appellant-objector(s) filed written objections, but the same were dismissed without giving them any proper opportunity of hearing by the learned Executing Court vide order dated 20.11.2015. Appeal filed by the appellant-objector(s) was also dismissed wrongly by the learned Appellate Court vide judgment dated 15.12.2015. Both the Courts below have failed to consider the fact that the decree was passed for Khasra No. 791 and not for Khasra No. 797 in which their house was situated. It was further contended that issuance of warrants of possession qua the property of the appellant-objector(s) was totally erroneous and against the law. Both the Courts below have failed to appreciate that the appellant-objector(s) were never a party to the litigation filed by Swaran Kanta. The appellant-objector(s) had purchased the property from Chanan Ram which falls in Khasra No. 797 vide registered sale deed No. 11992 dated 13.10.1987 (Annexure A-1) and residing in the same since then peacefully and continuously. Mutation was also sanctioned in their favour by the Revenue Authorities. Both the Courts below have also failed to appreciate that no adverse order quo was ever passed against the appellant-objector(s) nor the sale deed in their favour was ever challenged in any Court of law. The impugned order and the judgment

of the Courts below were not well reasoned and speaking. If the appellant-objector(s) would be dispossessed, in that event they would suffer an irreparable loss which cannot be compensated in any manner.

3. After giving my thoughtful consideration to the submissions made by learned counsel for the appellant-objector(s), I find the present appeal completely devoid of any merits for the reasons to follow:

- (i) Swaran Kanta (now deceased) filed a Civil Suit No. 74, for permanent injunction and possession on 14.09.1981 against one Comrade Dayal Singh Ex. MLA and others. The same was decreed on 30.08.1986, after a long trial of about 5 years;
- (ii) the appeal filed by Comrade Dayal Singh was dismissed by the District Judge, Ludhiana vide judgment and decree dated 03.11.1989. Regular Second Appeal No. 1773 of 1992 filed by Comrade Dayal Singh was also dismissed by this Court vide judgment dated 02.09.1992;
- (iii) No further appeal was filed. Hence, the judgment and decree dated 30.08.1986, attained finality.

4. During the pendency of the suit, Swaran Kanta died and his LRs were brought on record who filed the execution petition. The appellant-objector(s) being strangers to the above litigation filed third party written objections under Order 21 Rule 79 CPC claiming their

ownership over Khasra No. 797. They pleaded that the judgment and decree pertains to Khasra No. 791 and, therefore, their possession over Khasra No. 797 could not be given by the Executing Court to the decree-holders. The learned Executing Court after hearing both the sides including the appellant-objector(s) dismissed their objections being not maintainable. The learned Executing Court specifically observed as under:-

“3.the Decree Holders are claiming the entire claim from Khasra No. 791, whereas objectors have filed the present objection petition in respect of Khasra No. 797. Since it is the admitted fact that Decree Holders have no concern with Khasra No. 797 and further objectors have also no concern with Khasra No. 791.

4. During the course of arguments, Ld. Counsel for Decree Holders relied upon copy of map which was issued by Court at the time of issuance of warrant of possession and further counsel for Decree Holders also relied upon copy of Aksh-Shajra in which Khasra Nos. 791 and 797 have been shown, which are also not adjoining to each other. Since it is the admitted fact that Decree Holders have taken the physical possession of entire area except the area measuring 18' x 20' and further from the Aksh-Shajra, it reveals that there is distance between Khasra No. 791 and 797

as Khasra No. 794, 795 and 796 are in existence in between Khasra Nos. 791 and 797 and further Decree Holders have taken the possession on the part of Khasra No. 791 and further plea of objectors that the Decree Holders are trying to take the possession from Khasra No. 797 carries no weight as decree holders have already taken by physical possession from Khasra No. 791, adjoining to the land measuring 18' x 20' which is in question, upon which objectors are claiming their ownership. Since Khasra No. 979 is situated a little bit away from Khasra No. 791, so question of taking possession from Khasra No. 797 by the decree holders does not arise at all and further decree holders are taking the possession as per the map duly proved by decree holders in their suit and further decree holders are also taking the possession as per revenue record/Aksh-Shajra. Since the portion measuring 18' x 20' is in illegal possession of objectors and further same falls in Khasra no. 791 and objectors have no concern with Khasra No. 791, this Court is of the considered opinion that objection petition filed by the objectors altogether is not maintainable and same without any merits are hereby dismissed.”

5. Aggrieved with the same, the appellant-objector(s) had filed

appeal before the learned District Judge, Ludhiana, who also find no merit in the same and dismissed it vide judgment dated 15.12.2015.

6. I have carefully gone through the impugned order and judgment passed by both the Courts below as well as the judgment and decree dated 30.08.1986 passed by the Sub Judge Ist Class, Ludhiana; judgment and decree dated 03.11.1989 passed by the learned District Judge, Ludhiana and also the judgment dated 02.09.1992 passed by this Court in RSA No. 1773 of 1992 filed by Comrade Dayal Singh and find no illegality or perversity in the same, because the Executing Court, had issued warrants of possession qua Khasra No. 791 with which the appellant(s)-objectors have no concern as they are claiming their title of Khasra No. 797. The learned Executing Court is well conscious of the fact that the decree-holders have to be delivered the possession of area measuring 18' x 20' comprising Khasra No. 791 and not of Khasra No. 797. The possession of remaining portion of Khasra No. 791 except 18' x 20' has already been got delivered to the decree holders.

7. It seems that the appellant-objectors have filed their third party objections with *mala fide* intention and ulterior motive to illegally refrain the decree-holders to take possession of the suit property after fighting a long legal battle for about 34 years since 1981. The instant second appeal is liable to be dismissed with heavy costs, but in the interest of justice no such cost is imposed.

8. In view of the above, the instant appeal being completely meritless from all angles is hereby dismissed.

January 04, 2016
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(RAMENDRA JAIN)
JUDGE