

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

**ESA No.215 of 2016 (O&M)
Decided on: 07.10.2016**

Wazir Singh

....Appellant

Versus

Smt. Ompati Devi and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Dr. Parveen Hans, Advocate
for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against the judgment dated 16.03.2016 passed by the Additional District Judge, Hisar whereby the appeal preferred by the respondents against the order dated 09.04.2014 passed by the Additional Civil Judge (Sr. Division), Hansi (hereinafter referred to as 'Executing Court') was allowed and the matter has been remitted to the Executing Court for decision of the objections afresh after framing issues and production of evidence by the parties.

Wazir Singh – petitioner filed a suit in respect of land measuring 36 kanals 16 marlas on the premise that he remained in possession of the suit land till 01.01.2010 as a *gair marusi* tenant and had been forcibly dispossessed by the defendants on 02.01.2010. Defendants No.1 to 5 filed their joint written statement claiming that they got possession of the suit land from the plaintiff and gave it to Randhir, Dheera, Shishpal sons of Jug Lal on *batai tihai* and vide sale deeds No.660 and 1007 dated 29.01.2008, they have already sold land to Smt. Shanti wife of Randhir, Ompati wife of Dheera, Chanderpati

wife of Dharampal, Jeewni wife of Shishpal and Phuli wife of Inder residents of village Puthi Samain, who are now owners in possession of suit land. Later, defendants No.1 to 5 appears to have been proceeded against *ex parte*. The suit was decreed by the trial Court vide judgment and decree dated 31.10.2011. The appeal against the judgment and decree filed at the instance of defendants No.6 and 7 namely Ashok and Kala was dismissed by the District Judge, Hisar vide judgment dated 20.08.2015.

Counsel for the appellant has submitted that as the trial Court while deciding the suit was well aware of the sale deeds purported to be executed by defendants No.1 to 5 in favour of the objectors and those sale deeds were duly considered by the Court while allowing claim of the appellant/plaintiff, the objection petition preferred by the vendees under the sale deeds namely Ompati Devi, Shanti Devi and Phuli Devi was rightly dismissed by the Executing Court but the Court of appeal committed a serious error rather illegality by setting-aside the order dated 09.04.2014 passed by the Executing Court and remitting the matter to the Executing Court for decision afresh *qua* the objections after framing issues and permitting the parties to adduce evidence in support of their respective claims. It is further argued that the objections preferred by Ompati Devi and others are nothing but an abuse and misuse of process of law in order to delay execution of the decree for possession passed in favour of the appellant that has attained finality.

I have heard counsel for the appellant, perused the

paperbook particularly the order dated 09.04.2014 passed by the Executing Court and the order impugned.

The objectors filed the objection petition under Order 21 Rule 97 CPC on the premise that they are in possession of the suit land on the basis of sale deeds No.660 dated 04.10.2007 and No.1007 dated 29.01.2008 and the defendants in the Civil Suit No.11-C have no concern with the suit property. The Executing Court dismissed the objection petition by holding that plea of the objectors in this regard has already been considered by the trial Court at the time of deciding the civil suit and the same has not been accepted, therefore, the objections are not tenable. Further, it has been held that the Executing Court cannot go beyond the decree and the objections being without merit are liable to be dismissed. The Executing Court failed to appreciate that objectors were not a party to the suit and, therefore, they have no occasion to raise any such plea before the trial Court that could be considered and decided. Any plea raised by the contesting defendants at the back of the objectors and decision thereon if held to be binding against the objectors, it would amount to condemning the objectors without providing them an opportunity of being heard. The sale deeds propounded by the objectors were executed in their favour prior to institution of the suit that was filed in the year 2010. Despite the fact that defendants No.1 to 5 brought it to the notice of the Court by filing the written statement that suit land has already been transferred in favour of Shanti Devi and others, the appellant did not bother to implead them as a party whose presence was otherwise necessary for complete and effective adjudication of right of the appellant to recover

possession of the suit land. In this view of the matter, I do not find any error much less infirmity in the order impugned, setting-aside the order passed by the Executing Court with a direction to the Executing Court to frame issues and permit the parties to adduce evidence and thereafter to decide the objections, in accordance with law.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

07.10.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No