

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

ESA No. 219 of 2016(O&M)

Date of decision: 17.12.2016

Piara Lal @ Piara Ram

....Appellants

VERSUS

Prasin Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Satbir Rathore, Advocate for the appellants.

Mr. Arnav K. Sood, Advocate for the caveator.

REKHA MITTAL, J.

The present appeal directs challenge against orders dated 08.01.2016 passed by the Additional Civil Judge (Senior Division), Mukerian and dated 09.09.2016 passed by the Additional District Judge, Hoshiarpur whereby the objection petition preferred by the appellant was dismissed by the executing Court and the order passed by the executing Court has been affirmed in appeal.

Respondents No.1 and 2/plaintiffs filed a suit for declaration that the plaintiffs and defendant No.11 are joint owners in possession to the extent of half share each of land measuring 27 kanals 14 marlas situated in village Kala Manj, Tehsil Mukerian, District Hoshiarpur as per jamabandi for the year 1989-90 and sale deed dated 23.01.1987 and mutation sanctioned on the basis thereof as well as entries in the revenue record are illegal, *void ab initio* and ineffective on the rights of the plaintiff with consequential relief of injunction. The suit was dismissed by the trial Court vide judgment and decree dated 01.10.2002 The appeal filed by the

plaintiffs found favour with the Additional District Judge, Hoshiarpur, judgment and decree passed by the trial Court was reversed and the suit filed by the plaintiffs/respondents was decreed vide judgment and decree dated 05.03.2004. The parties to the *lis* tried their fortune up to Hon'ble the Supreme Court but the judgment and decree dated 05.03.2004 was affirmed. The decree holders filed an application for execution of the decree wherein the present appellant filed the objections in respect of land comprising Khasra No.31//4/1. The objection petition was dismissed by the executing Court. As has been noticed hereinbefore, the appeal preferred against the order passed by the executing Court did not come out to be successful and as a result, findings recorded by the executing Court were affirmed.

Still feeling dis-satisfied, the present second appeal has been preferred by the objector/appellant.

Counsel for the appellant has submitted that father of the objector/petitioner (appellant herein) remained in possession of area measuring 1 kanal 3 marlas of khasra No.31//4/1 and after his death, the appellant continued to be in possession of the said area. The appellant and his family raised construction of houses, obtained electric connections and are in possession of the land in question prior to the year 1950 but they were not made a party in the suit filed by the respondents/plaintiffs. It is further submitted that the appellant has placed on record the photographs (Annexure A-5) showing the existing construction at the spot raised by the appellant and his family. In the demarcation conducted, in pursuance of an application filed by the appellant, constructed houses of the appellant and his family were found in khasra No.31//3/2, 4/1, as per report dated 20.12.2013 of the Field Kanungo (Annexure A-3/T) marked as Ex.OW5/A.

In addition, it is submitted that nephews (brother's son) of the appellant filed a separate objection petition against execution of the decree but their objection petition has been allowed by the executing Court vide order dated 08.01.2016 (Annexure A-7). According to counsel, the executing Court passed contradictory order qua objection petition preferred by Manohar Lal and Sarwan Lal son of Pritam Singh son of Zulfi and the objection petition preferred by the present appellant, therefore, the orders passed by the Courts below cannot be allowed to sustain and liable to be set aside. He has raised a mercy plea that in case houses of the appellant and his family are demolished in pursuance of a decree to which he is not a party, the appellant and his family consisting of 15 to 16 members would be rendered homeless.

Counsel for the caveators/decreed holders, on the contrary, has supported the impugned orders with the submission that the appellant has failed to plead and prove his independent right, title or interest in land comprising khasra No.31//4/1 (1-3), therefore, unauthorized/illegal possession of the appellant or his family over the land for any number of years would not enure to his benefit to cause any obstruction in execution of the decree that has attained finality up to Hon'ble the Apex Court after a prolonged legal battle. It is further argued that the demarcation report (Annexure A-3/T) has been rightly discarded by the executing Court in view of its observations recorded in para 16 of the order dated 08.01.2016 wherein it has been held that the demarcation report could not be validly proved by the objector. Khushal Singh, Field Kanungo has categorically admitted in his cross examination that demarcation was not conducted in his presence.

With regard to plea that objection petition preferred by Manohar Lal and Sarwan Lal sons of Pritam Singh, brother of the appellant having been allowed, it is argued that the said objection petition pertains to khasra No.31//3/2 (1-14) and the executing Court in view of evidence adduced by the objectors particularly entries in the jamabandis from 1979-80 onwards, recorded a finding in favour of the objectors in view of the reasoning assigned in para 16 of the order dated 08.01.2016 (Annexure A-7). It is argued that the present appellant has failed to draw similarity in the two case by referring to any materials on record, therefore, he cannot derive any advantage to his contentions from the order passed in the objection petition filed by Manohar Lal and another in respect of khasra No.31//3/2 (1-14) whereas the khasra number involved in the present case is 31//4/1. The last submission made by counsel is that as the appellant failed to establish his right, title or interest in land comprising khasra No.31//4/1 (1-3), the Courts below have rightly negated his contention that either he can resist or obstruct execution of the decree or can continue in possession of land in question to the detriment of the decree holders.

I have heard counsel for the parties, perused the paper-book particularly the orders impugned.

Counsel for the appellant has failed to point out any materials on record to substantiate plea of the appellant that he has any independent right, title or interest in the land in question. The report Ex.OW5/A has not been prepared, in compliance of the instructions issued by the Government or High Court Rules and Orders. As a matter of fact, counsel for the appellant has not advanced any argument to assail the findings of the executing Court recorded in para 16 of the impugned order, referred to hereinbefore. As has been rightly argued by counsel for the

caveator/decreed holders, long possession over land belonging to someone else would not be sufficient to mature into a title, right or interest unless and until the person in possession is able to plead and establish that his possession has ripened into a hostile title by way of adverse possession.

As in the case at hand, the appellant has failed to establish his independent right, title or interest in the suit land, no error much less infirmity can be found in the consistent findings recorded by the Courts below negating his claim to resist or obstruct execution of the decree that has attained finality up to Hon'ble the Supreme Court of India.

So far as the objection petition filed by Manohar Lal and another, the same pertains to different khasra number 31//3/2 (1-14). Counsel for the appellant has failed to advance any arguments much less meaningful to draw a similarity between his case and that of the case of Manohar Lal and another. Under the circumstances, contention of the appellant that the executing Court has passed contradictory order is misconceived and merits outright rejection. The mercy plea raised by the appellant is not sufficient to frustrate the decree passed in favour of the respondents/decreed holders after a protracted litigation which was fought up to Hon'ble the Supreme Court of India. Had the appellant been fair in his conduct, he would have approached the decree holders at the first instance for negotiations. This Court adjourned the case on certain occasions in order to enable counsel for the appellant to seek instructions but still the appellant did not approach the other party for amicable settlement. As an upshot of the facts and circumstances discussed hereinbefore, the appellant cannot be allowed to retain possession even on equitable consideration.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

DECEMBER 17, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no