

In the High Court of Punjab and Haryana at Chandigarh

ESA No. 23 of 2016
Date of Decision:18.3.2016

Joginder Singh

---Appellant

vs.

Puran Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sandeep Khunger, Advocate
for the appellant

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?

Rekha Mittal, J.

The present appeal has been directed against the order dated 19.1.2016 passed by the Additional District Judge, Fazilka dismissing the appeal against order dated 28.5.2014 passed by the Additional Civil Judge (Senior Division), Jalalabad whereby the objection petition filed by the appellant-objector in execution petition titled “Puran Chand vs. Balbir Kaur” has been dismissed.

Counsel for the appellant by referring to site plan (Annexure A-2) would contend that predecessors-in-interest of the appellant namely Bagha Singh and Mehar Kaur were owners of six shops numbered 1 to 6 in the site plan which were inherited by the appellant, Partap Singh husband of Balbir Kaur and Mohinder Singh, sons of Bagha Singh. Two shops which had fallen to the share of Partap Singh out of six shops were sold by Partap Singh in the year 1995 and 1998 bearing Nos. 5 and 6 and depicted in green colour in the site plan aforesaid. As Partap Singh had already sold two shops of his share, he was left with no right, title or interest in the shop in dispute bearing No.2, depicted in red colour in the site plan. It is further argued that the Courts below have committed a gross error rather illegality in dismissing his objection petition against execution of the decree obtained by Sh. Puran Chand against Smt. Balbir Kaur widow of Partap Singh. Another submission made by counsel is that assuming though not admitting that Smt. Balbir Kaur was owner to the extent of half share in the shop in dispute, the decree in question cannot be executed qua other half share that belongs to the appellant.

I have heard counsel for the appellant, perused the records particularly the orders impugned.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to note a brief background of the case. Puran Chand son of Hukam Chand filed a suit for possession by way of specific performance of an agreement of sale dated 6.1.2000 executed by Smt. Balbir Kaur widow of Partap Singh. The suit was decreed by the trial court and the appeal preferred by the judgment debtor Smt. Balbir Kaur did not find

favour with the first appellate Court. Sh. Puran Chand filed an application for execution of the decree passed against Smt. Balbir Kaur. Joginder Singh, the present appellant and brother-in-law (husband's brother) of Smt. Balbir Kaur filed the objection petition. The plea of the objector in the objection petition (Annexure A/3) is that previously Smt. Amar Kaur widow of Bagha Singh was owner of the shop bearing property No. 609, detailed in sub para (a) of para 2 of the petition. After death of Amar Kaur, ownership of said shop was transferred in the records of Municipal Committee in the name of Partap Singh and Joginder Singh in equal share. After death of Partap Singh, ownership qua his share was transferred in the name of Smt. Balbir Kaur, judgment debtor. The shop in question is in possession of Baldev Singh, tailor as a tenant under Smt. Balbir Kaur and objector Joginder Singh. Mohan Lal, House Tax Clerk in the office of Municipal Committee, Jalalabad examined as PW1 in the civil suit deposed that as per municipal records, Balbir Kaur is owner to the extent of half share of property No. 609/1 i.e. the property in dispute. The decree in question has no bearing on the right of the objector to the extent of his share in the disputed property.

Firstly, the submissions made by counsel for the appellant by referring to the site plan (Annexure A-2) are totally alien to the case set up in the objection petition and sufficient to prove that the objector has tried to take a somersault knowing fully well that the plea raised by him in the objection petition has no legs to stand and has been rightly rejected by the Courts below. Counsel is not in a position to convince that the appellant can be permitted to raise a disputed factual controversy in the second

appeal. In this view of the matter, contentions raised by counsel for the appellant by referring to site plan (Annexure A-2) are misconceived and merit out right rejection.

Though counsel for the appellant has not made any submissions in regard to plea raised in the objection petition but the Executing Court while dismissing the objection petition has noticed that the appellant failed to adduce evidence to prove that the shop in question was previously owned by Smt. Amar Kaur and was inherited by Partap Singh and Joginder Singh to the extent of half share each when otherwise, Mohinder Singh is admittedly the third son of Smt. Amar Kaur and Bagha Singh.

Avninderpal Singh son of Partap Singh appeared in the witness box as special attorney of objector Joginder Singh. Mandeep son of Mohinder Singh son of Bagha Singh was examined as OW7. Both the witnesses failed to support cause of the objector in view of the facts elicited during their cross examination. Counsel for the appellant has failed to point out any materials on record to establish that Smt. Amar Kaur was owner of the suit shop or the same was inherited by Partap Singh and Joginder Singh. The Executing Court has rightly held that an entry in the Municipal House Tax Assessment Register (Ex. D2) is not a document of title to prove contention of the objector that the suit shop was owned by Partap Singh and Joginder Singh.

Joginder Singh objector did not appear in the witness box to prove his case. Avninderpal Singh, special attorney of the objector is none else than son of Smt. Balbir Kaur. It appears that Joginder Singh filed objections with a clear intent to save Smt. Balbir Kaur of her

obligation/liability under the decree in question and to frustrate the same. It further appears that in laws family members of Smt. Balbir Kaur joined hands with her to have an escape from the judgment and decree passed in favour of Sh. Puran Chand. As per settled position in law, no one can be allowed to abuse and misuse the process of law and a person who has approached the Court with a mala fide intent has no place to be heard much less granted any relief. In this view of the matter, I do not find any error much less illegality in the findings recorded by the Courts below, based upon detailed and correct appreciation of the matter in right perspective.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

18.3.2016
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