HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 1150 of 2017 (O&M)
Date of decision: 17.2.2017

Shashi Gupta ...Petitioner

Versus

M/s Jagdish Rai and others

...Respondents

CORAM:HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Jasmail Singh Brar, Advocate
for the petitioner.

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<u>RAMESHWAR SINGH MALIK, J.</u> (Oral)

Feeling aggrieved against impugned order dated 12.7.2016 (Annexure P-5) passed by learned Additional District Judge, dismissing the appeal and upholding the order dated 19.3.2005 (Annexure P-3) passed by learned executing court, whereby objections filed under Order 21 Rule 90 of the Code of Civil Procedure, by a third party who was not party to the decree, were dismissed, petitioner has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioner.

It is a matter of record and not in dispute that plaintiff-respondent No.1 filed a suit for recovery against defendant for an amount of ₹1,26,000/-, which was decreed vide an ex parte decree dated 30.1.1999. Decree holder-respondent No.1 filed execution petition on 4.3.1999. In compliance of the order passed by learned executing court, shop bearing Municipal No. B-1/366 was attached on 12.4.1999. As a consequence of the attachment order, abovesaid shop was put to an open auction on 14.12.1999 for a sum of ₹6 lacs. As pointed out by learned counsel for the petitioner himself, the decretal amount was paid to the decree holder and the remaining amount is lying deposited in the court. After the abovesaid shop bearing Municipal No. B-1/366, having been put to open auction, petitioner filed objections under Order 21 Rule 90 CPC for setting aside the auction sale, claiming to be co-sharer in the property which was sold by way of auction.

Since the entire case of the petitioner revolves around Rule 90 of Order 21 CPC, the same deserves to be noticed here, which reads as:-

> ***90. Application to set aside sale on ground of irregularity or fraud.-*** *(1) Where any immovable property has been sold in execution of a decree, the decree holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.*
>
> *(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.*
>
> *(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.*

During the course of hearing, when asked to point out any irregularity or fraud in publishing or conducting the sale by way of auction, in compliance of the order passed by learned executing court, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that objections filed under Order 21 Rule 90 CPC were not even maintainable. That is what has been held by the learned courts below and the impugned orders deserve to be upheld, for this reason also.

Peculiar facts and circumstances of the case as well as relevant provisions of law were duly re-considered and re-appreciated by learned appellate court in the correct perspective, before passing the impugned order. Relevant observations made by learned Additional District Judge in para 13 to 15 of the impugned judgment, which deserves to be noticed here, read as under:-

> *"This Court has considered the rival contentions of both the parties and perused the record with their able assistance. Main point for determination in this appeal is:*
>
> *Whether the petition u/o 21 rule 90 CPC filed by the objectors, now appellants,were maintainable?*
>
> *The execution petition to execute the decree dated 30.1.1999 was filed by the DH M/s Jagdish Rai on 4.3.1999. The attachment of the shop in question was effected on 2.4.1999. The notice u/o 21 rule 66 CPC was issued to the JD but none appeared on behalf of the JD in spite of service and then the attached property was put to auction on14.12.1999 and he attached property was purchased by Kulwinder Kumar son of Mohan Lal an Rakesh Kumar son of Satpal for a sum of Rs.06 lacs in equal share. Then the objections were filed U/o 22 rule 90 CPC to set side the sale by the present appellants. These objections are filed on the ground that objectors are co-sharers in the shop sold in public auction on 14.12.1999 for the debt of JD Raj Kumar.*

The objection petition u/o 21 rule 90 CPC can be filed on the ground of irregularity or fraud in the same of immovable property in the execution of a money decree and as per order 90 rule 3 CPC no such application to set aside the sale under this rule shall be entertained upon any ground which could have been taken before the proclamation of sale. The present objectors/applicants are third party to the decree in question and they could file third party objection to the attachment of property as provided under Order 21 rule 58 CPC but the objections are filed on 21.12.1999 after the sale of attached property. Hence no objection u/o 21 rule 58 CPC was maintainable on the said date and learned trial court has also given findings that the objection of Objector U/o 21 rule 90 CPC were not maintainable. This finding of the learned trial court is based on proper and correct proposition of law as third party has no right to file objections u/o 21 rule 90 CPC.

However, learned trial court has also given findings that the attached property was ancestral property of Devi Dayal, predecessor in interest of the objectors, but thee findings are without pleadings and without any evidence. No finding can be given without the proper pleadings of the parties. There is no pleadings by any party that suit property was ancestral and coparcenary property in the hands of Devi Dayal or Raj Kumar. Hence the findings of the learned trial court that suit property is ancestral property of Devi Dyal are set aside and findings of learned trial court on issue no.1 are set aside as learned trial court has given findings that objection petition is not maintainable u/o 21 rule 90 CPC and admittedly the shop in dispute was owned by Devi Dayal at one point of time and objectors are his natural legal heirs. So the question whether objectors are co sharers or not is left upon at this stage

> *to be decided in appropriate proceedings. The objectors can proceed under proper provisions of law if so advised."*

Learned counsel for the petitioner could not point out any patent illegality or perversity in either of the abovesaid impugned orders passed by both the learned courts below, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction. Learned appellate court has rightly left, the question of co-sharership of the petitioner with the judgment-debtor, open to be decided in the appropriate proceedings, granting liberty to the objector-petitioner to pursue his remedy, in accordance with law, if so advised. So far as present case is concerned, since petitioner could not bring on record any material to establish any irregularity or fraud in publishing or conducting the sale by way of auction, objections filed under Order 21 Rule 90 CPC were rightly rejected, thus, the impugned orders deserve to be upheld, for this reason as well.

Again, when asked to point out the source of information or knowledge of the petitioner about the auction proceedings and reason for not coming to the court at earlier point of time before sale by auction, he had no answer. In fact, a very casual averment has been taken by the petitioner in para 7 of the objections under Order 21 Rule 90 CPC (Annexure P-1), without pointing out the source of information or knowledge. Although it was argued by learned counsel for the petitioner that petitioner could not come to know about the sale proceedings, as he was residing in a different town, i.e. Sangrur and property was situated in Barnala, yet even the said fact was not pleaded by the petitioner in his objections (Annexure P-1), for the reasons best known to him.

In fact, under the peculiar facts and circumstances of the case, if any objection was to be raised by the petitioner, that could have been raised only under Order 21 Rule 58 CPC and that too, at the appropriate stage, objecting to the attachment of property. However, it was not so done by the petitioner and for no good reasons. In view of what has been discussed hereinabove, no fault can be found with the impugned orders passed by the learned courts below and the same deserve to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

17.2.2017 **(RAMESHWAR SINGH MALIK)**
AK Sharma **JUDGE**

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No